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ABSTRACT

This module on rights and responsibilities is intended to introduce the hospitality manager or supervisor to sound personnel management practices that comply with the law. The material is presented in a self-instructional format in seven sections. At the beginning of each section is a statement of the objectives that will be achieved as a result of working through the material that follows. Users of the module are asked to relate information given in the text to their own experience and knowledge. Where appropriate, suggested solutions to these questions are given on the opposite or following page. Topics are as follows: (1) the law and personnel procedures; (2) contracts of employment and work permits; (3) discipline, grievances, and disputes; (4) dealing with staff who are dismissed; (5) nondiscrimination and equal opportunities; (6) time off and maternity rights; and (7) protecting people in the workplace. (YLB)

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OPERATIONAL
MANAGEMENT
PROGRAMME

Personnel Management
MODULE

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OPERATIONAL MANAGEMENT PROGRAMME

HOW TO USE THIS UNIT

The material in *Rights and Responsibilities* is presented in a self-instructional format. It will help build on and consolidate the work covered in the one-day HCTC course of the same title.

Rights and Responsibilities is divided into seven sections. At the start of each section is a statement of the objectives you will be able to achieve as a result of working through the material that follows.

From time to time you will be asked to relate information given in the text to your own experience and knowledge. Space is provided below these activities for you to write your answers. Some suggested solutions to the questions are given on the following page.

You will also be referred to two related HCTC books:

- *Employee Relations* (7th edition)
- *Health, Hygiene and Safety in the Hotel and Catering Industry*, published with Macmillan Education as part of the *Mastercraft* series.

Delegates on the HCTC's course will receive a number of assignments relating to *Rights and Responsibilities*.

INTRODUCTION

The words 'rights' and 'responsibilities' are inextricably linked: they represent two sides of the same coin. All legal (and moral) rights carry responsibilities. For example, the right to receive a salary or wage also holds the responsibility for carrying out appropriate work for that pay. Whether something is a right or a responsibility depends on whose point of view is being considered. In the example just given it would be the employer's responsibility to reward each member of staff in the agreed manner.

Each manager needs to devise procedures which uphold rights and responsibilities while carrying out the objectives of the establishment, unit or operation. Some of those procedures will be shaped largely by operational demands and the manager's personal style of management. Others will be shaped largely by legislative requirements.

Rights and Responsibilities considers a variety of sound personnel management practices which comply with the law. It does not attempt to turn you into a walking legal encyclopaedia.

SECTION 1
The law and personnel procedures

After completing this section you will be able to:

- outline the legislative framework for personnel management
- give examples of the individual rights of people at work, and state some ways in which these may be affected by new EC legislation
- identify procedures appropriate to your workplace which meet legal obligations, and establish sound working relationships.

A century or so ago employers could do more or less what they liked. They could refuse to employ black, Jewish or Irish people. They could pay women at half the rate of their male colleagues. They could sack staff without explanation, ignore safety considerations and make a working day last 18 hours without guaranteed pay in cash.

Things have changed. Today's employees have a number of individual legal rights and some collective (union) rights. Although much of the employment legislation passed by Parliament in the last decade has been designed to remove some of the restrictions placed on employers by laws passed in the 1960s and 70s, managers must still grapple with many different applications and effects of the law.

(This unit only touches upon collective rights at work — the areas often called 'industrial relations'. If you would like a brief insight into these areas before you tackle the rest of this section, look at chapter 2 of *Employee Relations*, paying particular attention to the paragraphs on trade unions; and chapter 12, paying particular attention to the paragraphs on individuals and unions.)

THE LEGISLATIVE FRAMEWORK

There are two basic sources of law: *common law* and *statute law*. Common law has existed throughout our history and is the 'unwritten' rules of what is fair in everyday life. Trespass and negligence are typical examples. Common law derives from judges' decisions, while statute law usually comes from an Act of Parliament.

You are probably also familiar with the terms: *civil law* and *criminal law*. Civil law, whether common or statute, regulates the relationships between individuals. Defamation and breaches of contract come under this heading. Criminal law is concerned with an act or omission to do something, or to do something to a particular standard, laid down by common or statute law and subsidiary regulations. Forms of punishment are specified.

It is important to remember that, in practice, matters of dispute can often be dealt with under two forms of law. So a staff member who breaks a wrist at work because of a dangerous floor could sue you for damages in the civil courts, while an environmental health officer or health and safety inspector could prosecute you through the criminal courts for a breach of safety legislation.

Since 1964 there has been another important institution. This is the *industrial tribunal*, which has a status comparable to a Magistrate's or Sheriff's Court. Tribunals deal with almost all employment legislation in the first instance. Appeals from tribunals go to the Employment Appeal Tribunal, which has the status of a High Court. An industrial tribunal consists of an experienced lawyer in the chair with two lay assistants. (For further details read the paragraphs on industrial tribunals in chapter 2 of *Employee Relations*.)

Think about some of the more important individual legal rights which employees have and list them below.

The list is extensive. It might include these individual rights at work:

- statement of terms and conditions of employment
- equal pay and opportunities regardless of sex and race
- guarantee payment in the event of short-time working or lay-offs
- trade union membership
- time off for certain activities.

This list is obviously not comprehensive and it is important to note that within a particular right, there may also be *hidden rights*. For example, there is — depending on certain criteria — a right to payment for redundancy dismissal. Within this right there are also rights to:

- a statement showing how redundancy payments are calculated
- full notice or pay in lieu quite apart from the linked rights to:
  - a trial period in an alternative job
  - time off with pay to look for other work.

As you can see, individual rights at work are extensive. So take care!

EC legislative programmes

During 1989, the EC summit at Strasbourg adopted the Community Charter of Fundamental Social Rights – the *Social Charter*. This took the form of a declaration of basic principles to be followed by binding proposals from the Commission.

The British Government was unable to support the Social Charter. Michael Howard, Secretary of State for Employment, writing in *Hospitality* September 1990, explained the three main reasons:

- the Charter would lead to an unnecessary increase in the number of employment rules and regulations; this would add to employers' costs, make them less competitive and make it harder for them to create new jobs
- the Government felt action should only be taken at Community level if the desired objectives cannot be achieved by member states at either national or local level
- the Charter did not take sufficient account of different national traditions and practices.

Of the 50 or so individual measures proposed under the action programme for the Social Charter, Howard commented that the British Government expected to be able to accept over a third, subject to more detailed clarification and the normal process of negotiation. There was another third of the proposals on which the Government had too little information to form a judgement. The remaining third raise 'fundamental difficulties for the UK'. These proposals include draft directives on the subject of part-time and temporary work, working time, maternity and paternity entitlements, health and safety regulations in the workplace, information and consultation of workers and standard contracts of employment.

- In general, part-time and temporary workers would have equality of treatment with full-time workers.
- All part-timers who work more than eight hours per week would be entitled to social security on the same terms as full-timers. At present many part-time workers earn less than the national insurance threshold. Under the new proposals staff in this situation would have to contribute to the NI fund, and so would their employers. The Government fears that many employers, particularly the small ones, could no longer afford to use part-time staff.

- Occupational pension schemes generally include people who work more than 16 hours per week. Having to include people working less than eight hours per week would involve a great deal of additional administrative work for little gain, the Government argues, and some employers, considering the price too costly, might wind up the scheme entirely, so that full-time staff would have to make private pension arrangements.
- Minimum daily and weekly rest periods are proposed for all staff. For part-timers, for example, this would be on a pro-rata basis according to the number of hours worked.
- Limits would be placed on the total hours (including overtime) worked by night workers over a period.
- Night work arrangements would have to be notified to health and safety authorities.
- Night workers would have free access to a medical assessment before beginning night work, and at regular intervals thereafter. Anyone experiencing health problems in connection with night work would have be to transferred to day work.
- Employees would not allowed to work overtime during what would normally be their daily or weekly rest period.
- All employees would receive annual paid holidays 'in accordance with national custom and practice'.
- Provision is likely to be made for special circumstances, for example to deal with an emergency or accident in the workplace, or seasonal fluctuations in trade. It may be possible for employe. : and employees to agree to spread the hours limits and rest periods over a longer period.

The Single European Market will make it easier for employees to take their pick of jobs, both in the hotel, catering, leisure and tourism industry, and in other industries. This is expected to lead to a demand for:

- better pay
- better training, particularly in languages
- better conditions of employment.

These issues are dealt with in more depth in the companion self-study unit *Staff Retention*.

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WHAT PROCEDURES MEAN AT WORK

A procedure is quite simply an acceptable way of carrying out some task. It may be the way in which dry goods are ordered, or the process by which new staff are recruited, or the way in which budgets are drawn up and agreed. A procedure provides everyone involved with a common pattern to follow so that efforts are co-ordinated and regulated.

In many cases the procedure is contained in a written form. This has the advantage of being a point of reference and guidance. But many procedures are unwritten although nonetheless established. This wide range of ways of doing things is simply a reflection of the variety and complexity of forms of social organisation.

In some cases the procedure is an imposed one, laid down by the law or an authority. In other cases it is an agreed process among those who operate or are affected by it. The effectiveness of any procedure is not dependent so much on the origin as on the acceptability and goodwill of those involved. The really successful procedures closely conform with the views of those who must observe them.

Any new procedure should be shaped by the needs it is designed to meet and by the experience of similar procedures. It needs to have some flexibility to adapt to new needs as they arise and yet be capable of consistent application.

In any workplace, even the smallest, it is necessary to provide orderly, consistent and known methods for dealing with working relationships. In this way problems can be tackled and differences resolved in a way that can be seen by all to be consistent and fair.

Make a list below of at least three reasons why you think it is necessary to have procedures at work. You may find it helpful to consider the reasons from:

a) the employer's viewpoint
b) the viewpoint of the staff.

From the employer's viewpoint:

- Basic rules reduce the risk of inconsistency.
- Proper procedures show commitment to fairness.
- Procedures provide continuity even when managers and staff change.
- Where there is more than one level of management, a procedure helps to define the authority at each level.
- Where the existence of a procedure is statutory or legally advisable, it enables the company to keep within the law.

From the viewpoint of the staff:

- A procedure provides a means of resolving an individual or group difficulty.
- It gives a greater sense of security and confidence of fair treatment.
- It allows those issues of importance to staff to be aired and recognised by management.

Consider how workplace procedures might help deal with the issue of smoking. In areas where food (in this context, food includes drink) is prepared or handled, there is generally an outright ban on smoking. This is not only seen as a desirable safeguard, but necessary to comply with the food hygiene legislation.

However, what would happen if management sometimes turned a blind eye to smoking while the restaurant was being cleared after service, for example? Or the manager, a heavy smoker, often lit up a cigarette in the chef's office? Rules and procedures have to be applied consistently and fairly if they are to be respected. If a particular rule or procedure has been allowed to fall into abeyance, or become ignored, then clear and adequate warning must be given before it is brought back into force.

An increasing number of people find smoking offensive. Some members of staff may prefer smoking to be forbidden in the offices, staff rest rooms and so forth. At what stage, and in what manner could a general ban on staff smoking be introduced?

For new employees who join an establishment where a no-smoking policy is already in force, and forms part of the contract of employment, there is no problem. Nor is there a problem where all existing employees agree to such a policy.

But what happens if a no-smoking policy is introduced, and some existing employees refuse to accept it? Only a carefully thought-out procedure can help avoid and deal with such difficulties:

- **encourage employees to themselves adopt and promote a no-smoking policy**
- **explain the circumstances to individual employees who may disagree with the new policy**
- **decide and make clear how you will deal with employees who do not comply with the new policy. This might mean waiving the rule for those individuals, or eventually dismissing them (having given a fair and reasonable period of notice, written warnings, the right of appeal, consulted with trade unions and so forth).**

FORMAL AND INFORMAL PROCEDURES

In those establishments which work with recognised trade unions, it is likely that many procedures will have been formalised and documented. At the other end of the spectrum in small, non-unionised firms, the likelihood is that the agreements will be quite informal and ad hoc, with staff free to chat to the boss over a cup of tea. In practice in the hotel and catering industry, it probably amounts to an amalgam of both the formal and informal, but all companies must have some form of grievance procedure — a formal arrangement is required by law.

Because of the nature of the industry and the generally relaxed interaction between managers and staff there are usually plenty of opportunities for informal discussions and so the idea of formalising some procedures may seem redundant. However, there are real dangers in accepting the idea that problem-solving can best be left to an ad hoc approach.

Unless you have always worked in establishments where all the procedures have been formalised, the chances are that you have experienced management/staff relationships which were left almost to chance and seen problems in these relationships solved more by good luck than design.

Note below some of the difficulties you have experienced when such problem-solving has been left to ad hoc arrangements.

Ad hoc arrangements can sometimes help solve a problem quickly. This is important, but in the long term difficulties can arise stemming from:

- differences in treatment at different times and in different departments
- uncertainty among staff and managers about what the rules actually are
- lack of understanding about who is responsible for what
- the same rules being interpreted differently, even by the same people
- the dangers arising from believing that problems are being solved 'over the heads' of those who think they should have dealt with them.

CONSULTATION

Let's start with a fact: no one has a monopoly of good ideas. This is especially true in hotels and catering where there are so many diverse skills and such a wide range of interactions. If the success of a business depends upon everyone who works in it, then it is clear that there is a need for a forum to exchange ideas. However, precautions must be taken to ensure that any meeting established under this banner does not generate into a gossip session or a get-together for moaners! This means that, to be effective, the consultative procedure needs to be properly constituted and its purpose made clear to all participants.

Consultation is not the same thing as communication, which happens to some degree whether it is planned or not. The specific ingredient that differentiates the process of consultation is that it is an exchange of ideas on a topic which affects the staff and the business with a view to finding a solution that is acceptable to both sides, before a decision is reached. It is not a form of negotiation. There should be no element of bargaining, no seeking to exchange one thing for another, no quid pro quo.

In essence, consultation is pre-planned discussion with staff to obtain their views and their feelings on a subject which may or may not lead to a change in practices, policy or procedures, but about which no decision has yet been reached.

SECTION 2
Contracts of employment and work permits

... AND DO YOU AGREE THAT THE AFORE-MENTIONED THIRD PARTY HEREAFTER KNOWN AS THE COMPANY WHEREAS INSOMUCH THAT THEREBY UNTIL THE .....

After completing this section you will be able to:

recognise your legal responsibilities when taking on staff

prepare a written statement of their terms and conditions of employment.

THE LAW AND TAKING ON STAFF

A contract of employment is made between an employer who agrees to pay wages and an employee who agrees to work for those wages.

In law there must be:

- an offer
- an unconditional acceptance of that offer
- and the intention of the parties to accept the resulting agreement as binding.

When an agreement is reached a legally enforcible relationship comes into existence called 'a contract'.

Look at the examples below and tick the ones which you think could be described as creating a contract in law.

☐ *1. A regular customer offers to sell you her car for £2500 and you agree to buy it.*

☐ *2. A representative from a drain cleaning company calls to see you. He describes the service provided by his firm and you agree to use him 'if and when required'.*

☐ *3. You offer your customers the opportunity of a catering service for special occasions to be provided by you at their homes. Your standard charge for a dinner party is £20 per person. Mr Mbata says he would like to take advantage of this service for the following week but says he only wants to pay £15 per head.*

☐ *4. After enquiry, Mrs Lindgren books a double bedroom for two nights at the bargain price advertised.*

1 and 4 are both binding contracts since there is both a firm and definite offer from one party, and a clear and unconditional acceptance from the other.

In example 2, there is only an intention to enter into a contract which is not binding. No contract will exist until you contact the firm and ask to use their services.

In example 3, Mr Mbata does not accept your offer. Instead he makes a new offer of his own (called a counter-offer in law) so there is no unqualified acceptance and therefore no contract.

The fourth element the law requires is that there should be an exchange, or the promise of an exchange (called consideration in law). In employment contracts this is the exchange of work for wages.

THE CONTRACT OF EMPLOYMENT

A contract of employment is made between the employer and the employee in the same way as any other contract in law if there is:

- an offer of employment by the employer
- an acceptance of the job
- the promise to pay a wage in return for the promise to work.

As a general rule, contracts do not have to be in writing. If you make a valid offer of employment to someone, this will be a legal contract if the person:

- writes to you accepting the offer for the agreed wage
- says to you that he or she accepts the post for the agreed wage
- turns up for work on the agreed date.

In other words once a job offer has been made and accepted for an agreed wage, then a legally binding contract of employment exists.

Tick the examples below which are legally binding agreements.

☐ *1. You offer Glafkos employment as 'casual staff' as and when needed.*

☐ *2. You write and offer a job to Fiona on Monday but decide against her on Wednesday when you write again to withdraw the offer. Her letter of acceptance crosses in the post with your withdrawal letter.*

☐ *3. You write to Joan to offer her the job at £180 a week. She then replies and accepts providing you raise the salary to £200 a week.*

☐ *4. Rick offers to work without wages 'to gain some experience'.*

1. There will be no contract until you offer Glafkos a specific job and he accepts.
2. A contract of employment comes into existence the moment Fiona puts her letter of acceptance in the post box, and you cannot then withdraw your offer. Fiona could claim payment for breach of contract, at the very least an amount to cover the usual period of notice.
3. Joan made a counter-offer and no contract will exist until agreement over her wage is reached.
4. There is no contract because the employer is not supplying any consideration and there is no intention to enter a formal contract of employment.

THE WRITTEN STATEMENT

By law – Employment Protection (Consolidation) Act (1978) – every new full-time employee must, within 13 weeks of she or he starting to work for you, be given a statement of the terms and conditions of employment. This is evidence of the terms of the employee's employment with you and it *must* be in writing. If however, you set out in writing all the terms and conditions at the time you make a formal offer to the employee, you do not need also to give her or him a written statement. But, whichever you choose to do, two copies of the offer-letter or the statement should be signed by the employee – one copy should be returned to you for your records — the other retained by the employee. The written statement must contain the following information:

1. The full names of the employer and the employee.
2. The date employment began. If the employment is for a fixed term – the date it is to end.
3. The date on which the employee's period of continuous employment began (because you have taken over an on-going business, for example).
4. The scale, or rate of pay and how the wage is calculated. You may include any fringe benefits here. Remember also that an employee has a right to be given an itemised pay statement.
5. The interval at which wages are paid – weekly, monthly or whatever.
6. Any terms and conditions relating to hours of work – including normal working hours. (You should consider whether you need to include any reference to overtime working here.)
7. Terms and conditions about holidays and holiday pay, including public holidays.
8. Terms and conditions relating to periods off work because of sickness or injury. (You may include here any details you need about notification of sickness, medical certificates and so forth.)
9. Sick pay arrangement.
10. Any pensions or pension scheme – if there are none, say so.
11. Length of notice which employee must give and which she or he is entitled to receive.
12. Job title – The law does not require a job description, but you should think about including one – perhaps on a separate document to which you can refer. You are not required by law to state the place of work, but it is a good idea to do so.

13. If you have more than 20 employees you must include a note on any disciplinary procedures or refer them to another document containing these rules.

14. If you have 20 or more employees you must also include a note stating to whom an employee can apply if she or he is dissatisfied with any disciplinary decision relating to her or him – or if there is an agreed procedure, what that procedure is. This can be in a separate document.

15. A note informing the employee to whom she or he may apply if she or he has a grievance or, if there is an agreed grievance procedure – what that procedure is. (This provision applies to all employers – small or large.)

An employee working at least 16 hours a week, or eight hours a week for at least five years, is entitled by law to a minimum period of notice of termination of employment depending on how long she or he has worked continuously with the company:

- one week after one month
- two weeks after two years
- three weeks after three years
- one week extra for each additional year of service up to a maximum of 12 weeks after 12 years' continuous service.

However employees who have a contract for three months or less, such as seasonal staff, are not entitled to a week's notice unless they actually work for more than three months. This should be made clear at the time of the appointment.

An employee is required by law to give the employer one week's notice after one month's service.

Many employers give, and require from the employer, a longer period of notice, and this is perfectly acceptable provided it is agreed as part of the original contract.

Over the page is an example of a written statement (reproduced from *Employee Relations)* containing all the information an employer is obliged by law to give.

Introduction

Part I of this statement sets out particulars of the terms and conditions on which I ... (*name of employer*) ... am employing you ... (*name of employee*) ... at ... (*date on which statement is issued*).

Part II of this statement sets out information on disciplinary rules, whom you should contact if you wish to appeal against a disciplinary decision or to take up a grievance, and the subsequent steps to be followed in the disciplinary and grievance procedures.

Your employment with me began on ... (*date*). Your previous employment with ... (*name of previous employer or employers*) ... counts as part of your continuous period of employment which therefore began on ... (*date continuous period of employment commenced*).

Alternatively

Your employment with me began on ... (*date*). Your employment with your previous employer does not count as part of your continuous period of employment.

PART I

1. You are employed as a ... (*insert job title*).
2. Scale or rate of remuneration, or method of calculating remuneration and the intervals at which remuneration is to be paid ... (*give details*).
3. Normal hours of work and any other terms and conditions relating to hours of work ... (*give details*).
4. Holidays and holiday pay ... (*give details*).
5. Terms and conditions relating to incapacity for work due to sickness or injury and sick pay (*if none, say so*) ... (*give details*).
6. Pensions and pension schemes (*if none, say so*) ... (*give details*)... (*also state whether a contracting-out certificate under the Social Security Pensions Act 1975 is in force*).
7. Amount of notice of termination to be given by:
   (a) The employee ... (*give details*).
   (b) The employer ... (*give details*).

   (*If the contract is for a fixed term no period of notice should be given but the date on which the fixed term expires should be stated.*)

PART II

1. The disciplinary rules which apply to you in your employment are ... (*explain them*).

Alternatively

1. The disciplinary rules which apply to you in your employment can be found in ... (*here reference should be made to a handbook or other document which is given to the employee with the written statement and additional note, or, if that is not practicable, can be read by the employee in a place to which he or she can gain access without difficulty*).

2. If you are dissatisfied with any disciplinary decision which affects you, you should appeal in the first instance to ... (*give the name of the person to whom the appeal should be made, or the position which he or she holds, for example, supervisor*).

3. You should make your appeal by ... (*explain how appeal should be made*).

Alternatively

3. The way in which appeals should be made is explained in ... (*refer to an accompanying handbook or document which is reasonably accessible to the employee*).

4. If you have a grievance about your employment you should apply in the first instance to ... (*give the name of the person with whom the grievance should be raised or the position which he or she holds, for example, personnel officer*).

5. You should explain your grievance by ... (*explain how grievances are to be raised*).

Alternatively

5. The way in which grievances should be raised is explained in ... (*refer again to an accompanying handbook or, if necessary, another document which is reasonable accessible to the employee*).

6. Subsequent steps in the firm's disciplinary and grievance procedures are ... (*explain them*).

Alternatively

6. Details of the firm's disciplinary and grievance procedures are set out in ... (*refer to an accompanying handbook or, if necessary, another document which is reasonably accessible to the employee*).

Note that the separate stages outlined in Part II can be telescoped where, for example, the same person is the first to be approached for appeals against disciplinary decisions and grievances, or where the method of application for both is the same.

Many employers use the written statement to give additional information to their staff about their terms of employment, in addition to those required by the law. You should think whether you need to include any other information, such as:

- the conditions under which accommodation, meals and uniforms are supplied
- the terms of joint contracts, between husband and wife
- continuity of employment (especially for seasonal and casual staff)
- maternity rights.

You should also give new employees a copy of your health and safety policy statement and any other rules about health, welfare and safe working practices. This can be in a separate document (see Section 7).

At some time you will want to change employees' terms and conditions, for instance to give them a pay rise, or change hours of work. You can include a clause in your statement or offer letter allowing you to do this but you must tell your employee about the changes. You do not have to write to each member of staff individually (although it is good practice to do so). It is sufficient in law to put up a notice about the changes in an obvious and accessible place.

If you change an employee's terms and conditions without his or her agreement you could be breaking your contract. If an employee is then forced to leave the job because he or she cannot accept the changes, the employee could claim to have been unfairly dismissed.

Compare the written statement issued to employees in your workplace with the example just given, and make a note on the page opposite of any improvements which might be made.

WORK PERMITS

Most overseas workers require a work permit in order to take up a job in the UK. Nationals from the European Community are an exception and do not need a work permit, except for those from Spain and Portugal who will continue to need a permit until 1993. (Countries must have been members of the EC for at least five years before the work permit rule is lifted.)

To qualify for a work permit, the overseas worker should normally be aged between 23 and 54 years. Permits are issued only for employment requiring highly skilled and experienced people in hotel, catering and leisure work. An applicant should have successfully completed full-time training of at least two years at an approved hotel and catering school abroad or, in the exceptional case, have relevant specialised or uncommon skills and experience.

Other requirements to qualify for a work permit are:

- a genuine vacancy exists
- there is no suitable labour in the UK to fill the vacancy
- the employer has made adequate efforts to fill the vacancy from suitable candidates living in the UK or EC countries which do not require a permit
- the application is for a named person for a specific job
- the pay and conditions of employment are at least as good as those offered in the area for similar work
- the overseas worker's qualifications, skills and experience were acquired outside the UK
- the overseas worker has an adequate knowledge of the English language.

None of these restrictions applies to nationals from EC countries (except Spain and Portugal).

> The Department of Employment announced in 1989 plans to relax the rules on work permits, in particular those applying to senior level transfers within a company, those bringing investment and job creation to the UK and those concerning scarce high level skills. The Department has also proposed making work permits effective for four years rather than one year as at present.

SECTION 3
Discipline, grievances and disputes

After completing this section you will be able to:

- describe the value of disciplinary, grievance and disputes procedures in personnel management
- play an appropriate role in establishing and maintaining suitable disciplinary and grievance procedures for your workplace.

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THE MEANING OF DISCIPLINE

The very word 'discipline' has an unfortunate connotation because it usually suggests some form of punishment. Yet, if you check a dictionary, you will find several meanings — and probably the last meaning given is that of retribution. As a manager, it is important you concentrate on the real primary meaning of discipline as a form of instruction — a constructive measure used to help someone change his or her behaviour to a more acceptable, more productive form. The idea of punishing someone should be forgotten.

Most managers would readily agree that it is part of their everyday duties to supervise staff, control staff and, if necessary, correct staff. People make mistakes, behave carelessly or wilfully, or refuse to conform to the standards that have been set. In such circumstances it is a manager's job to correct, to reprimand, to take steps to put matters to rights. This type of everyday discipline is not dealt with here. Disciplinary procedures exist to deal with the person who needs more than a word-in-the-ear approach. A more formal approach must be taken with this sort of 'offender'.

If there is one feature that characterises the whole of this subject, it is the need to be fair. Staff themselves have a strong interest in seeing that discipline is maintained — they see it as fair that their safety should not be jeopardised, that their pay should not be affected by a maverick who will not conform to standards that they happily accept as reasonable. In addition, everyone seeks fairness in the consistency of treatment he or she receives.

For these reasons, clearly established rules and standards of work behaviour, and an agreed method of dealing with offenders are matters of common interest to employer and employees alike. This is the true justification for having a disciplinary procedure.

In addition, if you have 20 or more employees, it is a legal requirement that you have a written code of disciplinary rules and procedures. Following this code of practice will ensure that you are seen by any court or tribunal as acting as a fair and reasonable employer.

WORKPLACE RULES

Most people like to know what the 'rules of the game' are and accept that the alternative is chaos. At work there is always a set of standards with which people are expected to conform — what people do or don't do. Many standards are not written down at all, but they are there and staff are aware of them.

However, it is not really feasible to expect that the element of fairness will prevail or be seen to be applied if all the rules are left to a general awareness. It therefore makes sense to codify company rules, not in the effort to cover everything comprehensively, but to provide a framework within which everyone can work comfortably.

Under the following general headings, write down some sample rules that you believe should apply in your workplace:

1. *Punctuality*

2. *Respect for other staff*

3. *Respect for property (employers' and employees')*

4. *Safety of colleagues and customers*

The range of your answers is likely to be wide, but may include some of the following points.

1. Need to report to work in accordance with duty rota.
   Observation of stated lunch and other breaks.
   Rules about changing times of work and on whose authority.
2. Rules on physical violence and abusive language.
   Maintenance of good hygiene standards.
   No mis-use of company and staff noticeboards.
   Rules on gambling.
3. Rules on abusing, defacing or damaging property.
   Use of company telephone for personal calls.
   Use of company vehicles.
   Theft of company or colleague's property.
   Mis-use of company time.
4. Rules on smoking.
   Rules on safety at work.
   Rules on hygiene and fire regulations.
   Rules on security.

BREAKING THE RULES

Once you have sorted out what you consider to be a sensible sample of the main rules to be observed, it is useful to consider the categories into which breaches of those rules might fall, depending on their degree of seriousness. Three categories might be considered:

- minor offences
- serious offences
- gross misconduct.

The value of this approach is that when you come to devise a procedure for handling matters of discipline, you can arrange it around this categorisation. Of course, these are not watertight compartments: a person who is late for work may have committed a minor offence. But if he or she persists in being late then that can soon be considered a serious offence.

DEVISING A DISCIPLINARY PROCEDURE

Having considered the rules to be enforced and the way in which offences may be categorised, it is time to start thinking how best to create a procedure. The best advice you can get here is to be found in the ACAS code on *Disciplinary Practice and Procedures in Employment*. The code is not a law. But, as with the *Highway Code*, its guidance can be taken into account in a court of law or by an industrial tribunal. ACAS has also published an advisory handbook, *Discipline at Work*. This handbook complements the code by providing more practical guidance, and takes account of case law and the development of good practice since the code was first produced.

Undoubtedly in disciplinary matters, more perhaps than anywhere else, you will find a written procedure a great help in establishing norms, in letting staff know where they stand and in helping trade union representatives look after the interests of their members in a disciplinary situation. An explanation of the disciplinary rules and procedures should form part of every new employee's induction programme.

Turn to chapter 14 of Employee Relations *and read the section on drawing up a disciplinary procedure. Then turn to Appendix IV and read the ACAS code. Don't worry for the moment about references to grievance procedures. These are covered later in this section.*

Now look at the extract from a company's disciplinary procedure on the next page. What conclusions can you draw from this extract? List below the points you consider to be of significant value in a disciplinary procedure.

ABC Ltd

Disciplinary procedure

1. The rule is that staff must start work on time and continue to work through until the end of the shift.

2. The offences are defined as:

   a) two days unauthorised absence in any four week period or less, and

   b) lateness in excess of the three minute allowance on more than one occasion in any one week.

3. The following are the disciplinary measures to be applied:

   First occasion

   Caution by the unit manager to be recorded in department's records.

   Second occasion

   Warning by unit manager in presence of shop steward and a written warning sent to offender by the personnel manager.

   Third occasion

   Suspension from work for two days without pay by the unit manager in the presence of the shop steward.

   Fourth occasion

   Suspension from work for two days without pay by the unit manager in the presence of the senior shop steward.

4. All warnings under the procedure will be deleted from the records after eight working weeks in which there have been no instances of unauthorised absence or lateness.

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Clearly, this company has a problem with lateness and absenteeism among its staff or the nature of the operation is such that work is seriously hindered if someone turns up late or fails to turn up at all. The following points of value are illustrated.

- It makes a clear distinction between rules, offences and disciplinary measures.
- It indicates that the treatment to be accorded to minor offences may be quantified.
- It illustrates how repetition of offences incurs increasingly severe punishment.
- It provides for the commonest sanctions: warning and suspension.
- It differentiates between the formal verbal warning and the more serious written one.
- It allows for the registering of sanctions.
- It provides a 'clean slate' provision to encourage offenders to reform.

WARNINGS

The ACAS code of practice is the main source of advice on warnings. One important point to note is that a written warning should never be given until the offender has been interviewed formally and given a chance to have a say. It is at this stage that the employee should be told formally where he or she is showing a short-fall in standards, with the evidence to support it. The employee's explanation should be sought. The ideal is to get a two-way conversation flowing to cover all the points necessary and to ensure that the employee knows what has to be done to improve. It is advisable to allow the employee to be accompanied by a union representative, or by a friend. If the employee has difficulty understanding English it is particularly important that a third party is present to reduce the risk of language difficulties causing misunderstandings.

The warning letter should then act as a written note of the interview.

Suppose that the extract from the disciplinary procedure on page 22 is part of your company's procedure. With the ACAS code of practice to assist you:

(a) Draft a first written warning letter to one of your staff.

(b) Imagine that your employee's time-keeping has not improved and draft a final warning letter below. Use any imaginary details to help.

No sample letters are supplied since everyone tackles letter writing in their own way. However, check your attempt against this list.

- Did you refer to an informal chat, held earlier, to try and stop the lateness?
- Did you specify the date of the formal interview leading to the letter?
- Did you specify the occasions of lateness resulting in the disciplinary interview?
- Did you refer to any explanation given by the offender and repeat what you replied during the interview to the reasons/excuses/explanations given?
- Did you specify precisely what needed to be done in future?
- Did you give a time limit for improvement and for a review?
- Did you warn what would happen if no improvement was made?
- Did you remind the offender of the appeal system if he or she was dissatisfied with your findings?

Remember that discipline is a management tool which can work well in increasing the efficiency and profitability of your workplace, provided it is seen primarily as a means of instruction. If it is used as a means of punishment, then it is likely to operate against your best interests.

Use the ACAS code of practice to measure your present disciplinary procedure with a view to putting right what may need doing. If you do not have a proper procedure, then use the code to assist you in drawing one up, even if you are not required by law to do so.

GRIEVANCE PROCEDURES

A grievance procedure allows an individual at work to make a complaint or raise a query affecting working conditions — such as pay, hours and holidays — and lays down the steps to be taken to resolve such a grievance.

An employee's written statement of employment should cover disciplinary matters (see Section 2). The statement must also state to whom a grievance is to be taken and all the steps involved. To that extent, it can be said that a grievance procedure is required by law. But it is also good management practice to provide some outlet for an aggrieved individual to air a worry or complaint. If not, then staff who feel hard-done-by will simply leave. Or, if they fear unemployment, they may stay on — but in doing so they are likely to moan to the wrong people, spread their dissatisfaction and probably work with little or no enthusiasm.

Most grievances can be settled fairly quickly and successfully. It is often a matter of correcting a misunderstanding. It may provide the manager with information about something that has gone wrong and of which he or she was unaware. Or it may just be a chance to get something off the employee's chest. Even in the few cases which are not happily resolved, at least the individual employee can see that his or her concerns have been noted by management.

Grievance procedures should be tailored to the requirements of the establishment and the staff employed there. They should provide:

- the facility to take the complaint, in the first instance, to an immediate superior
- the procedure for taking the matter to another level of management if it is not resolved at the first level
- a built-in timescale at each level
- the right for the employee to be accompanied at some stage by a trade union representative or friend
- a clear indication of where the final decision lies.

Generally, the role of supervisors or first line managers is crucial. Their responses will be conditioned both by their ability to settle the matter and by their readiness to do so. A lot depends on what authority they have in the subject of the complaint: they may, for instance, have no say at all in matters of overtime. But good supervisors will keep involved with the issues even if they do not have the authority or ability to resolve the problem.

Guidelines on preparing a grievance procedure for non-union employees

1. The procedure must be available, in writing, to the employee, his/her superior(s), his/her workplace representative (if any) and the company management.
2. Where possible, the procedure must form part of the employee's personal copy of the written statement of terms and conditions. Otherwise, it must be accessible at all reasonable times.
3. In the event of a grievance arising, either as a result of a management decision to alter the means, method, material or other aspect of the job, or as a result of a claim put forward by the employee for some change in the terms, conditions, fringe benefits or pay associated with his/her job, then the arrangement existing prior to the grievance shall operate until such time as that grievance is settled satisfactorily. Notwithstanding this, the employee shall be required to accept such reasonable change in his/her job as is specified in the written statement of terms and conditions of employment.
4. In the first instance, the grievance shall be discussed with a view to resolution by the employee's immediate superior. This should take place as soon as possible after the occurrence of the grievance:
   a) The maximum time lag should be ..... days.
   b) An account of the meeting setting out arguments on both sides and the factual background and the outcome shall be put in writing within ..... hours of the first stage, by the supervisor. This report is to be signed by both parties.
5. In event of a failure to agree, there must be one or more further stages, involving progressively higher heads of management.
6. Provision must be made for external arbitration or conciliation — to be co-determined with the employees — and use should be made of local ACAS officers and other advisory personnel.
7. In the absence of an arbitration stage, failure to arrive at an agreement after the final procedure stage shall entitle the parties to take such other stages as they consider appropriate to arrive at a mutual conclusion.

Compare your grievance procedure with the guidelines on the previous page (designed for non-union staff). Can you identify any points which might usefully be incorporated in your procedure? What advantages and disadvantages do you see in including time limits in a grievance procedure? What is your view about recording the stages of the procedure?

As far as time limits are concerned, it is obvious that individuals want their complaint sorted out as soon as possible, but managers may feel they need time to gather the facts and consider what action to take — and this to be fitted in with other tasks. Time limits commit managers to finding solutions quickly. If they fail to meet the deadline, then the procedure may allow movement to the next stage. Some say that time limits undermine mutual trust. Others claim that they remove flexibility. In the end, the best procedures lay down time guidelines but allow for extensions by mutual agreement.

As far as documentation is concerned, it seems reasonable to expect something to be put in writing if the procedure may be taken to higher levels where little may be known of the claims and evidence in support. In addition, in situations where there is a failure to agree at any stage, the record will clarify the facts and contentions and be helpful at the next stage. Records can help keep track of unresolved grievances; they can help in the analysis of the causes of grievances and of where and why delays in settling them occur; and they can be particularly useful when a settlement is reached to ensure there are no misunderstandings. Finally, a written statement is clearly useful in communicating the outcome of the procedure.

DISPUTES PROCEDURE

A grievance might well affect a number of staff at the same time, such as the temperature of the kitchen or the allocation of overtime. In these circumstances it is possible to invoke a disputes procedure.

A disputes procedure is similar in operation to a grievance procedure, but there is a wide variety of application throughout industry — determined to some extent by the definition of a 'dispute'. In some cases a dispute exists only when a group of staff are affected. In others, as soon as a grievance involves the shop steward then it becomes a dispute. Still others call it a dispute if a grievance is not settled within the company and has to go to an external agency for resolution. Finally, some call it a dispute only when there is a breakdown in procedure.

In practice, a grievance procedure can easily be used or adapted to form a disputes procedure.

A final point on this procedure: if you find yourself in consultation with a trade union about establishing a procedure, whether to be called a grievance or a disputes procedure, you are likely to find yourself being asked to incorporate a 'status quo' clause.

If you are not familiar with the meaning of the term 'status quo', look it up in a good dictionary. What does it mean to you in employee relations terms? Note why you think trade unions are likely to be anxious to incorporate a 'status quo' clause in grievance/disputes procedures.

'Status quo' is a Latin phrase that means 'no change'. In fact the full phrase is 'status quo ante' and this means 'the state of things as they were before'. In industrial and employee relations terms, what it means when it is incorporated in a procedure is that the conditions applying immediately before the grievance or dispute was raised will continue to apply until the procedure is exhausted.

Trade unions are usually anxious to have a 'status quo' clause because they believe that many disputes at work are caused by management, such as those involving discipline, manning and redundancies. If there is no status quo, then that allows management to initiate changes and to require staff to operate those changes (even though they may be subject to dispute) while the procedure is gone through. Unions consider that unfair. So, in a nutshell, the unions often argue that it is their role to control working conditions as much as possible to protect workers from insecurity and any adverse effects of management decisions. They also argue that they believe in the principle of mutual agreement or joint regulation and having a status quo during negotiations is a practical way of ensuring that decisions are mutual and not made unilaterally by management.

Section 4 deals with procedures for staff who leave your employment voluntarily or who have to be dismissed.

SECTION 4
Dealing with staff who (have to) leave!

After completing this section you will be able to:

state what is meant by the terms 'dismissal', 'unfair dismissal', 'constructive dismissal' and 'redundancy'

describe the general procedure for dismissing an employee fairly

state the special factors that have to be taken into account in dismissals on grounds of capability or ill-health

state the main points which should be included in a redundancy procedure

counsel staff who are made redundant.

REASONS FOR LEAVING EMPLOYMENT

Some staff turnover may be necessary for a healthy business but unnecessary staff turnover will involve the operation in extra costs and reduce efficiency.

What do you know, or suspect to be, the most common reasons for staff leaving your/your employer's employment? (Do not include the 'unavoidable' reasons such as retirement or a move away from the district.)

Your list will vary according to a variety of local factors. Here are some of the most common reasons given by staff for leaving:

- the need to improve or enlarge the job
- an unsatisfactory level of pay
- lack of training and development
- a personality clash
- dislike of awkward or unsocial hours
- the distance and/or cost of travelling to work
- sense of being fed up.

Many organisations find it useful to interview all staff who propose to leave 'voluntarily' in order to establish the reasons and record them in their staff turnover file. Here are some guidelines:

- Make sure you have found out as much as you can about the leaver and have his/her personal record at hand.
- Start by expressing genuine regret, if that is valid.
- Explain that the interview is to try to identify any cause of dissatisfaction which you may be able to rectify for the benefit of those staying on. Explain that you are not seeking to dissuade the employee from leaving — although remember that he or she may really be seeking reassurance about his or her value and may wish to be dissuaded!
- Prepare a number of open-ended questions which will help the interviewee to open up and be honest with you in describing the reasons for leaving.
- Whatever happens, do not engage in argument or allow the conversation to become heated. Maintain a friendly atmosphere throughout.
- Complete the interview with thanks, if appropriate, for services given. In any case wish the leaver success in whatever he or she plans to do next.

STAFF WHO DO NOT LEAVE BY THEIR OWN CHOICE

It is not always the employee who decides to finish his or her employment. From time to time, organisations find it necessary to dismiss staff or to make them redundant. The legal implications of dismissal and redundancy are far-reaching and require special procedures and management skills. The rest of this section looks at dismissal and redundancy in detail. You are recommended to read all of chapters 15 and 16 of *Employee Relations*.

WHAT DISMISSAL MEANS

The law protects employees against unfair dismissal. Under certain circumstances, an employee can claim unfair dismissal at an industrial tribunal. If the dismissal is found to be unfair, the employer may have to financially compensate, re-employ or re-instate the dismissed employee.

> Read the section on industrial tribunals in chapter 2 of *Employee Relations*.

As you can see, it is important to be able to recognise a dismissal!

The Employment Protection (Consolidation) Act 1978, describes how dismissal covers three separate situations:

1. Termination of employment by employer, with or without notice. For example: 'You're fired immediately.'
2. Non-renewal of a fixed term contract when it expires. For example: 'When you have finished your three months' employment, as agreed, you will no longer be required here.'
3. An employee terminates his or her contract, with or without notice, in circumstances such that he or she is entitled to terminate it without notice by reason of the employer's conduct. For example: 'There's no way I'm going to continue working for you now that you've cut my hours from 30 to 10 a week!'

Decide in the following instances whether or not there has been a dismissal, noting below the reasons for your answers.

1. *Employer: 'That's it! You're finished with me.' (Said with anger.)*

2. *Employee: 'All right then: you have my resignation!'*

3. *Employer: 'Get out!'*

4. *Employer: 'You have two options: either we call in the police or you resign.'*

5. *Employer: 'If you're innocent, and I don't think you are, it is foolish to pack up your job. If you are not innocent and they prosecute, there is nothing I can do.'*

6. *Employer: 'This restaurant will be closing so it might be a good idea if you look for another job.'*

1. If you have hedged your bets with this answer by saying that it would depend on all the circumstances, then you are probably right. This holds good in most cases. However, in this case a tribunal is likely to have found that this was not a dismissal, not only because the words were spoken heatedly but also because the words themselves are ambiguous. A dismissal should be clear and unambiguous.
2. This may be simply a departure by a member of staff and therefore no dismissal. The employee may, however, subsequently claim constructive dismissal (see page 47). In that case, it is possible that the words would signify dismissal in the legal sense since the words are ambiguous. Presumably, the employer assumed the person was leaving by resigning.
3. On its own, this phrase could mean anything from: 'Leave the office now, can't you see I'm busy', to: 'Leave the company's employment immediately'. Only the circumstances in which the words were spoken can determine whether or not there has been a dismissal.
4. This looks like a forced resignation. If it is, then that is a dismissal.
5. This is not a dismissal because there has been no threat of actual dismissal.
6. A very important rule of law was established by the Divisional Court in 1967 in the case of Morton Sundour Fabrics *v* Shaw: there is no dismissal unless an employer specifies the date on which the employment will end or the date can be ascertained positively. In this case, therefore, there is no dismissal.

The first important practical lesson is to ensure that both you and the employee concerned recognise clearly when either of you seek to terminate the employment contract. If you are the one to sack, use words which are unambiguous. Follow this up with a confirmatory letter.

> Read carefully chapter 15 of *Employee Relations*, paying particular attention to legal requirements indicated by [L] against the paragraphs on: unfair dismissal, claiming unfair dismissal, constructive dismissal, wrongful dismissal and dismissing.

CLAIMING UNFAIR DISMISSAL

As you have just read in *Employee Relations*, to qualify to claim unfair dismissal, a person must be a full time employee. Unfortunately, there is no simple answer to the question: 'Who is an employee in the hotel and catering industry?' Here is an example of the way the law examines this problem.

Mr W was appointed as a bar steward 'on a self-employed basis', responsible for his own tax and national insurance. He took money from the till to pay himself and the bar staff and he hired and fired staff himself. The Employment Appeal Tribunal said: 'If you had asked Mr W while he was running the club bar, "Are you your own boss?" could he honestly have given any other answer than "No"? In our judgement, clearly not.'

In other words, people who are called "self-employed" and pay their own tax and national insurance contributions are, in some circumstances, actually employees. To decide it may help to ask the following:

- Does this person give every appearance of being an employee: could he or she refuse an order?
- Does this person appear to be in business on his or her own account?

You will have noticed while reading *Employee Relations* that the general rule is that staff must work for at least 16 hours per week in order to be able to claim unfair dismissal. This means that either they actually work 16 hours, or they work fewer hours but are contracted to work at least 16 hours. Where the hours vary from week to week, it is the 'normal' hours that count, not the average. One variation on this is that an employee with a minimum of five years' continuous service will qualify if he or she can show that he or she works a minimum of eight hours per week. On the other hand, the law also allows that where a person used to work at least 16 hours and then agreed to a contract change which allows at least eight hours of work, the first 26 weeks of the changed contract can count in working out the necessary two years' qualification for unfair dismissal rights.

A final point worth noting is that if there is anything that could be considered illegal, either in the contract itself or in its performance, then the employee will have no right to claim unfair dismissal. This type of exclusion arises where an employment contract is in some way 'tainted'. It has a special relevance to some parts of the hotel and catering industry where payment is made without reference to Inland Revenue requirements!

Mrs Jones had worked for several years in a pub on a regular basis of three days one week (20½ hours) and two days the next (12½ hours). When she was dismissed, her employer defended the claim of unfair dismissal on the grounds that her two-day weeks broke her continuity of employment and therefore she was not entitled to claim unfair dismissal. What do you think? Note your reasons below.

Continuity of employment only applies when 16 hours or more a week are worked regularly, and not if it is a turn-and-turn-about arrangement with the alternative week below 16 hours. Mrs Jones would not be allowed to aggregate or average her hours and therefore she would not be entitled to have her claim heard, unless her period of continuous employment exceeded five years. If this was the case, she would fulfil the minimum eight hours a week requirement.

CONSTRUCTIVE DISMISSAL

These are the most common cases to come before industrial tribunals.

The first ingredient of constructive dismissal is that there be a repudiatory breach by the employer. The breach of contract can be of either an *express term*, like agreed wages, or of an *implied term*, such as mutual trust. The second necessary ingredient is that the employee must react promptly. If he or she does not leave shortly after the conduct of which he or she complains, then it can be held that the employee has elected to affirm the contract in its changed form.

Tick those of the following which you think are likely to be cases for constructive dismissal. Against each one that you have ticked indicate with an E or an I whether it is an express term (E) or an implied term (I).

		√	E or I
1.	*Unilateral reduction in basic rate of pay.*		
2.	*Unilateral alteration of the formula for calculating pay.*		
3.	*Change of contract and demotion.*		
4.	*Non-payment of outstanding overtime.*		
5.	*Insistence on employee working non-contractual hours.*		
6.	*Withdrawal of free transport facilities with consequential cost to the employee of £X per week and an extra hour's travelling time.*		
7.	*Reduction in bonus earnings amounting to £Y per week.*		
8.	*Saying to a long-serving member of staff: 'You can't do the bloody job anyway!'*		
9.	*Reporting a member of staff to the police for suspected dishonesty without discussion with the accused member of staff.*		
10.	*Abusing a member of staff in conversation with a third party.*		

1, 2, 3, 4, 5, 8, 9 and 10 are likely to give rise to claims of constructive dismissal. 1 to 5 look like clear cut breaches of express terms in most staff contracts. 8, 9 and 10 are more likely to be seen as breaches of implied terms of a contractual relationship with an employer. 6 and 7 would probably not amount to a fundamental breach of the contract by the employer, but each case depends on its own particular facts and circumstances.

Lord Denning, at the end of what is now recognised as one of the leading cases concerning constructive dismissal (Western Excavating (EEC) Limited *v* Sharp, 1978) said:

> 'If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all, or alternatively he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once.'

Three conditions need to be satisfied for an employee to claim constructive dismissal:

- the employer must have committed a serious breach of the employee's contract, for instance reducing wages/salary, withholding holiday pay, changing hours of work
- the employee must leave as a result of that breach of contract
- the employee must make the break soon after the breach of contract has occurred.

In recent years the courts have taken into account the duty of trust and good faith which should normally exist between employer and employees. An employee who had been humiliated in a degrading and insulting fashion by being severely reprimanded in front of other employees was held as being constructively dismissed (Hilton International Hotels *v* Protopapa, 1990, described by Roger Peters, legal correspondent to the HCIMA, writing in *Hospitality*, November 1990).

WHAT IS UNFAIRNESS?

The law recognises two types of unfairness when an employee is dismissed:

Substantive unfairness ...ere is no valid reason for the dismissal.
Procedural unfairness Whether or not there was a valid reason, the way in which the employee was dismissed was unfair.

You will recall the list of 'potentially valid' reasons for dismissing an employee given at the start of chapter 15 in *Employee Relations*. Dismissals will be judged as fair only if:

- the employer can show the reason or principal reason for dismissal

and

- that the reason is 'potentially valid'

and

- the tribunal considers that the employer acted reasonably in treating the reason given as being sufficient for dismissal

and

- employee's length of service.

In addition the tribunal will consider the manner in which the dismissal took place. It is essential that procedures are followed and that the employer treats the employee in a fair and reasonable way. If not, however good a reason the employer may have, the dismissal may still be unfair.

It is recognised that there is a broad band of reasonableness. Lord Denning said (British Leyland *v* Swift, 1981): 'one employer might reasonably take one view and another quite reasonably take another view.' The factors considered important by a tribunal include:

- the size and administrative resources of the firm
- contractual rights and duties
- consistency of treatment
- employee's length of service and status.

For a number of years Mary worked for eight hours on a Monday and Tuesday and four hours on a Wednesday while Jane worked four hours a day for a five day week. One day their manager informed them that they would be required to change their working hours to four hours on a Thursday and eight hours on a Friday and Saturday because the pattern of trading had changed. Both women complained that this clashed with their personal circumstances and they both refused. They both left and claimed constructive and unfair dismissal.

Note below how you think an industrial tribunal would regard these claims.

Often in cases like this, the employer argues that the hours are those set out on weekly rotas and that any variations are similarly noted and exhibited. A tribunal however is more likely to assess the contractual arrangements by measuring what hours the women had actually worked. Even if there had been reference to variation this would not amount to a right to unilaterally vary the hours of work.

It is also probable that a tribunal would say that an employer's need to deploy staff to best advantage is neither of more or less importance than the personal and domestic circumstances of the part-time employees concerned. To sustain the employer's claim that part-time employees can be required to work 20 hours any time within the 40 hour week, the employer would have to show this clearly in the contract with the staff concerned.

So it is probable that a tribunal would rule there was a fundamental breach of contract by the employer and therefore a case of constructive dismissal. It would also be assessed as an unfair case on the grounds that it was unreasonable for an employer to require part-time staff to work hours for which they had not been contracted and which did not suit their private requirements. (Brechin Bros Ltd *v* Kenneavy & Strang, Employment Appeals Tribunal 1982.)

In his article in *Hospitality* (November 1990), Peter Rogers described two other cases in which the employer's action was considered unreasonable.

The first concerned a bank clerk whose contract of employment included a mobility clause, under which the bank could require the employee to move to any other branch of the bank in the UK (United Bank Ltd *v* Akhtar). The clerk was given less than a week's notice to move to Birmingham. His request for a three month's stay of execution (backed by some good reasons) was refused and the bank stopped his wages.

Pointing to the mobility clause, the bank refuted the clerk's claim that he had been constructively dismissed. The tribunal ruled that it was part of the duty of good faith that employees should be given reasonable notice of any transfer, and found in the clerk's favour.

The second example concerns the time period between the breach of contract and the employee's decision to leave (Reid *v* Camphill Engravers). The employee was being paid below the minimum wages under the Wages Order. His complaints were ignored, so after three years the employee left and claimed constructive dismissal. The industrial tribunal decided that three years was an unreasonable delay, and the employee appealed to the Employment Appeal Tribunal. EAT decided that each payment of wages in breach of the Wages Order was a fresh breach of contract, and the employee could rely on the most recent underpayments as grounds for claiming unfair dismissal.

CAPABILITY DISMISSALS

Any reason which relates to the capability or qualification of employees for performing work of the kind they were employed to do is potentially a fair reason for dismissal. Thus, capability refers to skill, aptitude, health or any other physical or mental quality.

Here are some examples which have been declared 'fair':

- the slow worker
- the worker who, though competent, lacks drive and adaptability for other duties
- the worker who cannot meet his or her manager's raised standards
- the new recruit whose performance does not match promise
- the inflexible and unadaptable worker
- the worker who cannot do the job because of poor eye sight.

Employers do not have to establish in detail the correctness of their belief in the employee's incompetence but only that they have reasonable grounds for it and have taken reasonable steps to verify their conclusions. The test of fairness is a test of the employer's reasonableness.

The Court of Appeal has two tests of a 'fair' capability dismissal:

- the employer honestly believes the employee to be incompetent or unsuitable for the job

and

- the grounds for that belief are reasonable.

Describe below what you consider an employer might be reasonably expected to show had been done before dismissing an employee on grounds of incapability to do the work he or she was employed to perform.

Not only will the tribunal be keen to find out what an employer has done when faced with a seemingly incapable employee, but it will also expect to discover what steps were taken from the outset to minimise the risk of poor performance and to create the conditions which allow employees to carry out their duties satisfactorily. Thus, proper training, supervision and encouragement are essential to the 'fairness' of such dismissals, especially for employees promised a new job with the firm. It may also be apt to see if the employer could have re-deployed the person to a more suitable job.

That apart, the three basic things which will be assessed in these cases are:

- whether there was a proper appraisal/investigation of the employee's weaknesses, and identification of the problems
- whether there had been any warnings of the consequences of failure to improve
- whether the person had been given a reasonable chance to improve.

DISMISSAL ON GROUNDS OF ILL-HEALTH

It is always a difficult decision whether or not to dismiss a sick employee. Here again a tribunal will look to see whether the employer's conduct towards the employee has been fair and reasonable.

Long-term illness

An attempt should be made to balance the employer's need to run a profitable and successful business against the employee's need for reasonable job security. The ACAS advisory handbook *Discipline at Work* offers some useful, practical guidance to an employer faced with this problem.

You should consider:

- the terms of the employee's contract
- the employee's age and length of service
- the type of illness and the prospects of recovery
- whether the employee holds a key position
- the interests of the business.

It is most important to consult the sick employee and discuss the matter with him or her. Keep in touch and take whatever steps are necessary to discover the medical problem.

Short-term illness

An employee who is persistently absent for short periods can cause a problem to an employer. Good employment practice should ensure that steps are taken to find out the nature of the illness and to warn the employee that he or she may be putting his or her job at risk.

Philip, the manager of your outside catering operation, has been away from work with a heart condition since February. It is now October and your busiest time of the year. Regretfully you decided to dismiss Philip and appoint a new manager.

State below how you would argue that Philip's dismissal was not unfair.

Provided you have acted fairly towards Philip by keeping in touch with him, trying to discover the true nature of his condition and whether he is likely to make a full recovery, it is probable that the urgent needs of your business and the difficulty of obtaining temporary staff at that time of the year would mean that any dismissal would not be considered unfair.

'Aids should be treated like any other medical condition', wrote Greville Janner in *Caterer and Hotelkeeper*, 5 October 1989. It would not be reasonable or fair to dismiss an HIV carrier, where it has no effect on the person's work, or those he or she comes into contact with. If Aids develops and performance is affected, then the disease should be treated as any other. Before dismissing, employers should be very careful to establish all the facts, discuss the matter with the employee concerned, do their best to help, and give the right of appeal to a higher level of authority. Janner adds that a dimension which restaurateurs, hoteliers and caterers might have to consider is the effect on business if words gets out that they are employing an Aids carrier or sufferer.

DISMISSING FOR MISCONDUCT

Without doubt, most cases of unfair dismissal are ones in which it is alleged that an employee has been guilty of gross misconduct. There is no strict legal definition of misconduct but case law (that is tribunal decisions) show that misconduct need not be 'gross' but 'substantial' in relation to the employee, the job and the surrounding circumstances.

Again, it is for the employer to show that the misconduct was the reason for the dismissal and there was a genuine belief on reasonable grounds after reasonable investigation that the employee's misbehaviour justified dismissal. This means that employers do not need to have conclusive direct proof — only a strong suspicion, reasonably tested.

It is now well established that, to be found fair, a dismissal for misconduct must have been preceded by:

- appropriate warnings
- a thorough investigation of the offence
- informing the person of the complaint
- giving the person the opportunity to state his or her case
- allowing the person to be represented at the final in-house hearing.

If you have not done so already, read the whole of chapter 15 of *Employee Relations*, paying particular attention to the paragraph on avoiding problems, and Appendix IV.

In situations where it proves impossible to establish which employee was guilty of gross misconduct, employers may decide that there is no alternative but to dismiss each of the employees who was likely to have been responsible. Greville Janner, writing in *Caterer and Hotelkeeper*, 13 September 1990, described a case in which the branch manager of an off-licence was fairly dismissed, even though he may well have been completely innocent (and was certainly not proved guilty) of the crime (Parr *v* Whitbread plc, trading as Thresher's Wine Merchants).

One night someone de-activated the alarm system, opened the shop's safe and removed the entire contents. After carrying out a full investigation, the company sacked the four people most likely to be guilty. In upholding the tribunal's decision that the dismissal was fair, the Employment Appeal Tribunal laid down guidance for cases of 'blanket dismissals':

- the incident must be sufficiently serious to warrant dismissal
- a full and proper inquiry must be conducted (it cannot simply be left to the police, nor should the police be present at the employer's interviews with suspect employees)
- it must be clearly established that the offence could have been committed by any member of the dismissed group, and that the employer could not 'reasonably identify the individual perpetrator'.

REDUNDANCY

Redundancy is a form of dismissal. In brief, the law defines redundancy as a situation where:

- an employer has ceased (or will cease) to carry on a business for the purpose of which, or in the place where, an employee was employed

or

- a diminished workload has reduced (or will reduce) the need for employees carrying on particular work in their workplace.

An employee's redundancy dismissal must be wholly or mainly attributable to one of the 'redundancy situations' above.

Employees are entitled to compensation through the Redundancy Payments Scheme (RPS), provided they fulfil certain service and age criteria.

The redundancy payment due is calculated on a formula of percentages of a week's pay for each year of continuous service (up to a maximum of 20 years) and the employee's age. Overtime does not count unless there is a contractual obligation for the employer to provide, and the employee to carry out, such overtime. The pay is calculated as the normal wage, excluding benefits in kind, but can include tips or service charge paid by customers provided they are collected by the employer and distributed among the staff. In the case of shift workers whose remuneration varies week by week, the week's pay that counts is the average number of hours worked in a week multiplied by the average hourly rate.

The calculations are quite complex, but the Department of Employment will give detailed guidance.

> Read chapters 16 and 17 of *Employee Relations*.

REDUNDANCY PROCEDURES

Whenever an organisation decides it must reduce its staffing there is always upset, not least for those whose posts are declared redundant. In a world that is no stranger to recession, many managers feel that it is realistic and in the best interests of everyone to face that possibility with some form of contingency plan. That usually means having a redundancy procedure.

Bearing in mind that a redundancy procedure is best considered as a general contingency plan rather than a list of detailed arrangements, make a list below of the main points you would wish to see incorporated in any redundancy procedure that might be agreed for your workplace.

The points you are likely to wish to see covered in a redundancy procedure will include:

- an agreement to consult trade union/staff as soon as redundancies seem likely
- actions to be taken to avoid compulsory redundancy
- agreement on warning period to be given to staff affected by the selection criteria
- additional compensation
- an appeals procedure

The 'last in, first out' selection method for redundancy has the merit of cheapness (redundancy payments usually increase with length of service), but applying the criteria fairly (essential if a legal claim is to be avoided) may mean losing enthusiastic, talented employees who have just been recruited and trained.

Voluntary redundancy or early retirement avoid the risk of unfair dismissal claims, but may cost employers some of their most experienced employees.

Selection on merit – or choosing those least needed – allows the employer to keep the best workforce in the circumstances, but is likely to involve difficult decisions which employees and trade unions challenge in the courts.

You may have heard, or read in the trade press that the industry's image was being tarnished by poor treatment of staff who were being laid off, without any help for their future careers. List below some of the ways in which employers can help staff cope with redundancy.

In a report in *Caterer and Hotelkeeper*, 11 April, 1991, Dom Walsh quoted Gary Katzler, joint chief executive of the recruitment consultants Berkeley Scott:

'You can't sit here and expect companies not to make cuts, but it's how they do it that is the problem. Wielding the axe is perhaps necessary but there are ways of doing it.

'There are a lot of disgruntled people who, if they had been handled properly in an exit interview, might have been willing to return to the same company when the economic situation improves.

'We are shooting ourselves in the foot: we believe we will lose so many people from the industry that we will be faced with an additional nightmare on top of the demographic problem.

'Redundancy is an unpleasant situation for all concerned, but demonstrating basic human kindness and concern, and providing some level of advice and assistance can do much to soften the blow.'

Here are Berkeley Scott's suggestions on helping staff cope with redundancy:

- Take the trouble to explain in some detail why redundancy is considered necessary, and that the decision does not reflect individual's personal ability or performance.
- Give as much warning as possible.
- After the initial discussion, offer the opportunity for a further discussion of a constructive nature, once the individual has had a little time to try to come to terms with the news.
- Some people will be totally unprepared for finding a new job, especially if they have worked for the same organisation for many years. Therefore some basic tips on the job hunting process will be appreciated such as: a hand-out on how to prepare a CV, a list of Jobcentres, recruitment consultants, and trade publications, local and national newspapers which carry classified job advertisements, coaching in how to present and conduct yourself in an employment interview.
- Arrange with a recruitment organisation to provide further counselling – some companies will do this at no extra cost.

The next section deals with the different types of unfair discrimination and equal opportunities.

SECTION 5
Non-discrimination and equal opportunities

After completing this section you will be able to:

- state the different types of unfair discrimination
- state the rights of individuals to join or take part in a trade union (or not to join or take part in a trade union)
- identify barriers to equality of opportunity
- take positive action towards an equal opportunities policy and procedure in your workplace.

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KINDS OF DISCRIMINATION

By now, you should be aware of the value to a manager of operating fair, even-handed procedures. The Race Relations Act, 1976; the Sex Discrimination Act, 1975, amended by the Sex Discrimination Act, 1986; the Equal Pay Act, 1970 and the Equal Pay (Amendment Regulations), 1983 make the principles of equal treatment a legal obligation in employment.

By and large, employers can appoint who they want on their own criteria without interference from the law. But it is illegal to discriminate against anyone on the grounds of their sex, marital status, skin colour or race — regardless of your motives for doing so. Of course, recruitment and selection by definition is discriminatory — you choose A in preference to B, presumably because you think A will do a better job. It is *unfair discrimination* which is illegal.

Unfair discrimination can be direct or indirect. An example of direct discrimination would be where a company advertised for bar staff and specified that blacks and/or women should not apply. Indirect discrimination would occur if, for example, you questioned a female job interviewee about her plans to start a family. You should avoid any practices which indicate an intention to discriminate unfairly. For example, beware of laying down conditions which are not justified by the job, which considerably fewer women than men would fulfil — 'candidate must be at least 1.80m tall'.

Employees who feel that they are, or have been, the subject of unfair discrimination or inequality can take their case to an industrial tribunal.

> In late 1990, Age Concern England and related organisations, including the Institute of Personnel Management and the Centre for Policy for Ageing, joined forces to form the *Alliance Against Ageism*, a campaign to ban ageism in recruitment and employment. (*Caterer and Hotelkeeper*, 6 December 1990, Fiona Bacon.)
>
> The Alliance points out that older applicants can offer more continuity than someone younger, and their experience and maturity will more than compensate for the ambitious drive employers look for in younger applicants.

SEX DISCRIMINATION

In brief, the law forbids discrimination on grounds of sex or marital status, whether done directly or indirectly, before or after appointment. It is therefore illegal to discriminate in the way you provide opportunities for promotion, transfer and training, or by not offering equal access to benefits, facilities or services that go with the job, or by subjecting women at work to detrimental treatment.

Here are a few examples of actions that fell foul of the law:

- opportunities for promotion for higher posts were advertised in a magazine read mostly by men (Woodcock *v* Boots the Chemist, 1976)
- failing to offer a woman a supervisory post because she was married and had three young children at home (Braine-Hartnell *v* Merton, 1978)
- free travel facilities for men's spouses but not for women's spouses (Simpson *v* National Carriers Ltd, 1977)
- dismissing a woman employee after she had passed her 60th birthday as part of a policy of retiring men at the age of 65 and women at the age of 60. It is now unlawful to set different retirement ages for men and women in comparable positions (Marshall *v* Southampton and South West Area Health Authority, 1986).

There are exceptions to this law. For instance, where being a man or woman in itself is a genuine qualification for the job. This applies to posts like lavatory attendant, and to the kind of place where it is impracticable for staff to live anywhere else and the only accommodation available is one sex only and it would be unreasonable to expect the employer to provide such separation.

Here are the guidelines given by the Employment Appeal Tribunal to test a claim by an employer that discrimination is justifiable.

1. The reason for the discriminatory requirement or condition must be genuinely necessary.
2. All the circumstances, including the discriminatory effect of the requirement or condition if allowed to continue, must be weighed up.
3. The need for the requirement or condition must be weighed against its discriminatory effect.
4. Convenience to the employer is of no avail; there must have been an attempt to find another, non-discriminatory way of achieving the same end.

> Seemingly innocent requirements can turn out to be indirectly discriminatory. A man whose job application was turned down because he was receiving an occupational pension succeeded in his complaint of indirect discrimination. In an attempt to promote the employment of genuinely unemployed people, the employer's policy was not to appoint anyone who was receiving a pension. The rejected applicant was able to prove that of those looking for work who were in receipt of a pension, there more men than women, and thus the policy was discriminatory. (Greater Manchester Police Authority *v* Lea, 1990.)

RACIAL DISCRIMINATION

Simply put, the law forbids discrimination on racial grounds. These grounds cover colour, race, nationality or ethnic origin. You will notice that it does not cover religion, except in Northern Ireland but it has now been decided that Jews and Sikhs are such by ethnic origin and therefore are protected from discrimination on those grounds.

Here are some examples of racial discrimination which broke the law:

- a white woman was refused a job because her husband was West Indian (Wilson *v* Steelwork Co, 1978)
- a firm advertised for staff but excluded all applicants with a certain postal district address (where 50% of the inhabitants were coloured) (Hussein *v* Saints Complete House Furnishings, 1979)
- a company which operated a 'no beards' rule (Singh *v* Rowntree Mackintosh, 1978)
- a black person was offered a job, but the offer was withdrawn after a group of white employees objected (CRE *v* Westminster City Council, 1986).

As with the sex discrimination rules, there are exceptions which give an employer a good case to argue against any claim. The most interesting one for the hotel and catering industry is where the job involves working in a place where food or drink is provided for the public and is in a particular setting for which a person of a particular racial group is required for reasons of authenticity; hence Chinese serving staff in a Chinese restaurant.

> The Commission for Racial Equality report *Working in Hotels*, published in 1991, presented the findings of a general investigation carried out by the Commission between 1987 and 1989 into recruitment and selection in the hotel industry, with particular emphasis on managerial, supervisory and skilled jobs. The investigation showed that 'the hotel industry has taken few initiatives towards equality of opportunity; suitably qualified ethnic minority applicants do not apply for careers in hotel management, and nor are there many ethnic minority students on the relevant college courses....Despite recruitment and retention problems, a major industry can ignore good equal opportunity practice, thereby maintaining established patterns of inequality....The hotel industry has a reputation for giving a low priority to personnel issues, but the almost universal disregard of the Code's* recommendations which we found cannot be justified, either on the grounds of inadequate personnel resources or the inappropriateness of the Code for use in the industry.' (**Race Relations Code of Practice: For the elimination of racial discrimination in employment and the promotion of equality of opportunity*, CRE, 1984.)

List below some practical steps that could be taken in your workplace to encourage racial equality of opportunity. Your suggestions could take the form of DO'S and DONT'S.

Action points for personnel and general managers recommended by The Commission for Racial Equality in its report *Working in Hotels* included the following:

DO

- find out about the ethnic minority populations in your area
- build links with local schools, ethnic minority groups and the local Racial Equality Council
- consider placing job advertisements in the ethnic minority press
- make sure that colleges, Jobcentres and careers service know that you are actively encouraging ethnic minority people to apply for jobs
- review job descriptions and personnel specifications regularly to see that they do not include criteria that are not job related
- monitor the ethnic origins of applicants at each stage of the recruitment process, and analyse the data regularly to check that there are no barriers, and to measure performance
- if there are no ethnic minority applicants for jobs or promotion, ask why, and take action to deal with the problem.

DON'T

- use informal methods of recruitment, for example by word of mouth, if your workforce is predominantly from one racial or ethnic group
- make judgements about applicants or candidates for promotion which are not based on the job requirements.

Other recommendations made in the CRE report include:

- job advertisements should include a positive action message along the following lines: ***People from ethnic minorities are underrepresented in supervisory and management positions, and are therefore particularly encouraged to apply. Section 38(1)(b) of the Race Relations Act applies***
- do not let a single member of staff have sole responsibility for hiring staff – decisions should be taken by two people at least, or be checked to avoid any possibility of racial bias
- wherever possible, the subject of equal opportunities should be incorporated into existing training courses on staff recruitment and selection, for example identifying barriers to equality of opportunity by examining recruitment methods, job descriptions and personnel specifications, equal opportunity interviewing, and being aware of the possibility of cultural bias and racial stereotyping
- including modules on cultural awareness in customer contact training – understanding the needs of the various local ethnic communities, will mean that services can be adapted to meet these needs, so making good business sense.

EQUAL PAY

In brief, this law establishes the right of men and women to equal treatment as regards terms and conditions of employment, provided they are employed on the same or broadly similar work or work of equal value. If the work is not the same, a women can still claim equality of pay with a man if the demands made on her are the same as that on a man in the same employment. These demands can be in terms of effort, skill or decisions made. Where part-time workers, who are mainly female, are doing the same work as full-time employees, they should receive the same rate of pay (pro rata).

Consider each of the following advertisements. Does it comply with the legislation outlined? Give your answer with reasons below.

Waiter required. *No experience needed. Training will be given. Apply to ...*

Vacancy for a ***Front of House Supervisor.*** *Must hold National Certificate SCOTVEC. Apply to ...*

Both advertisements break the law.

It is not necessary to invent new job titles, such as 'waiting person' but it is necessary to show that the post is open to men and women. You could say: 'Waiter (male or female) required.' Or, better still: 'Serving staff required.'

You should avoid setting criteria where length of residence or experience in the UK or countries within the UK is required. If a particular qualification is needed, you must make it clear that comparable qualifications would be equally acceptable.

DISCRIMINATION AGAINST EX-OFFENDERS

If an offender against the law is not convicted again during a specified rehabilitation period, his or her conviction becomes spent. The length of rehabilitation varies from six months to ten years. Prison sentences of more than two and a half years never become spent.

It is against the law to discriminate against an ex-offender because she or he has a spent conviction. For instance, an ex-offender cannot be dismissed for failing to disclose a spent conviction.

WORKING TOWARDS EQUALITY

It would be naive to believe that because of the legislation outlawing unfair discrimination, every company now provides equal opportunities for all. Unfortunately, there are still many firms, especially in the hotel and catering industry, who do not seem to realise the value to the business of utilising the talents and resources of people irrespective of their sex or race. Equal opportunities are a legal requirement. But they also make good business sense; they are an essential part of good management.

Under the headings on this and the next page, note some ways in which you can contribute to an equal opportunities policy in your workplace.

RECRUITMENT AND SELECTION OF STAFF

WORKING CONDITIONS

TRAINING

OPPORTUNITIES FOR PROMOTION

COMMUNICATIONS

Check your points with the last section of chapter 7 of *Employee Relations* (equal pay and sex discrimination) and chapter 9 (racial discrimination).

Both the Equal Opportunities Commission and the Commission for Racial Equality publish a wide range of informative booklets and guides and will offer advice – addresses and telephone numbers in Appendix II of *Employee Relations*.

RIGHTS OF TRADE UNION MEMBERSHIP AND NON-MEMBERSHIP

Under the Employment Acts 1982 and 1988 an employer may not dismiss, or take action short of dismissal (such as discrimination or victimisation), against an employee with the intention of :

- preventing, deterring or penalising the employee for belonging to or intending to join an independent trade union
- preventing or deterring the employee from taking part in the activities of such a union at any appropriate time, or penalising him or her for doing so
- compelling the employee to remain or become a member of any union
- requiring the employee to pay some other body, usually a charity, as an alternative to belonging to a trade union

irrespective of the hours the employee works or the length of his or her service.

To win a case claiming action 'short of dismissal' an employee would have to show that:

- there was some 'action' against him or her to prevent or compel union membership — this covers a multitude of sins under the heading of victimisation or discrimination
- the action took place
- the action was against the employee as an individual rather than against the union as a whole
- the action was to deter or discourage union membership or activity.

It is now unlawful to refuse to employ a person because he or she is, or is not, a member of a trade union.

List below some actions which an employer might take which could be illegal by being 'actions short of dismissal'. It may help to recall any stories you have been told or read about in which employees were victimised or discriminated against by their employer. Use your imagination too!

Here is a selection of actions that have been found by industrial tribunals to be 'actions short of dismissal':

- A decision not to promote an employee.
- The demotion of a manager to an assistant manager's post.
- Transferring a shop steward so that he had less contact with employees.
- Transferring an employee to a less satisfying job and where there were less tips.
- Not completing an employee's annual appraisal form.
- Preparing an adverse report to be sent to a promotions board.
- Refusal of a car-parking facility to an unrecognised union member.
- Threat of disciplinary action.
- Upgrading others but not the complainant.
- Threatening to close down the business rather than recognise the union.

The next section deals with time off and maternity rights.

SECTION 6
Time-off and maternity rights

After completing this section you will be able to:

- state when an employee is entitled to time off work, and in what circumstances this is paid
- state the main maternity rights of female employees.

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RIGHTS TO PAID AND UNPAID TIME-OFF

The law specifically allows staff to take time off from work in certain circumstances, sometimes with pay and at other times without pay. To qualify for this right, employees must work for at least 16 hours a week, or for eight hours or more a week if they have five years' service:

Trade union duties Officials of recognised trade unions are entitled to take time off with pay to carry out their duties and to undergo training for such duties. The amount of time allowed is to be 'reasonable'. (An ACAS code of practice gives guidance on what 'reasonable' means, see below.) In addition to these officials, a recognised trade union has a right to appoint safety representatives. These too have the right to carry out their safety duties and be trained in them.

Trade union activities All members of a recognised independent trade union have the right to take time off, but without pay, to take part in trade union activities. (The ACAS code of practice provides guidance.)

Public duties All staff who are engaged in public duties, such as JP, local authority councillor, member of a statutory tribunal or school or regional health authority governor, have a right to unpaid time off to attend to their duties.

Looking for work or re-training A member of staff who has a minimum of two years' service and who has been given notice of redundancy, is entitled to take reasonable time off in order to look for another job or to arrange training. In this case, since the maximum award a tribunal can make if you fail to allow this right to redundant staff is two-fifths of a week's pay, it seems as if your obligation to give paid time off is limited to two days.

Ante-natal care Women are allowed 'reasonable' time off with pay. This is regardless of their hours worked.

> Read the section on time off work in chapter 7 of *Employee Relations*.
>
> Obtain a copy of the ACAS code of practice *Time off for Trade Union Duties and Activities* (available from Her Majesty's Stationery Office).

Imagine you are the manager of an operation where an independent trade union is recognised. Briefly note below what you would do in each of the following situations.

1. *Jack is branch secretary of his union. He asks you for paid time off to attend a meeting of branch officials where a union organiser is going to explain the financial administration of the branch.*

2. *Tom, the shop steward who negotiates with you on only minor matters (he is really the liaison man between the staff and the full-time officer who usually negotiates with you), asks you for two weeks' paid time off to attend a shop steward's course. You offer him one week paid and the other unpaid. He claims a right to pay for both weeks.*

3. *Mary, a union member, tells you that the union is holding an official party to say farewell to a retiring trade union official. She asks to take unpaid time off to attend.*

4. *For some time you have allowed Joan time off on Thursday mornings to carry out her duties as a JP. You had arranged the work and rotas accordingly. Joan now asks you if she can change this arrangement to a Tuesday because that is a more interesting day in the courts.*

5. *You have given notice of redundancy to Bill. He requests time off to look for other work and to attend an interview with another firm. You ask for proof of this appointment but he refuses to give it.*

RIGHTS AND RESPONSIBILITIES

1. Since this meeting cannot be construed as one which affects the industrial relations in your company, you would be entitled to refuse this request for paid time-off.
2. Since such a course is likely to be very relevant to Tom's role he would be entitled to take both weeks on full pay.
3. Again, Mary is within her rights to expect unpaid time off for this function since it is an official union one, albeit of a social nature. The 'activities' involved in this right are to be widely interpreted.
4. A lot would depend on what Joan's request involved in terms of re-arranging work schedules. If it would cause undue disturbance, you would be entitled to refuse this request by Joan.
5. The ACAS code of practice certainly advises those who seek time off to make arrangements with the employer as early as feasible. But you have no right to demand proof that the request is a genuine one. After all, if you find that it is not, then it is within your rights to take appropriate disciplinary measures.

MATERNITY RIGHTS

A female employee has four main maternity rights:

a) not to be dismissed because she is pregnant or for any reason connected with it
b) to take time off for ante-natal care
c) to maternity pay
d) to return to work after confinement

For a) and b) there is no qualifying period. For c) and d) the employee must have worked minimum periods to qualify.

Read chapter 8 of Employee Relations, *paying attention to the legal points outlined and the practical implications for managers. Then answer each of the following questions in the space below.*

1. *Pam was on holiday during the three weeks before the eleventh week prior to her confinement. Is she entitled to maternity pay?*

2. *At the beginning of the eleventh week, Sally had been working for you for 103 weeks. She continued working for you throughout the following week and then went on maternity leave. Should you pay her the maternity payment?*

3. *Trudi was one week short of two years' employment at the eleventh week before confinement, but the actual date of her confinement turned out to be a week later than predicted. Is she entitled to maternity pay?*

4. *Because Mary's baby was born 11 weeks prematurely she did not give you the 21 days' notice required. Is she entitled to the maternity payment?*

1. The important point here is that Pam should be in your employment at the eleventh week; being on holiday does not break the employment. Therefore she is entitled to maternity pay.
2. It is a strict requirement that a woman must have been continuously employed for two years at the eleventh week before her confinement. In this case, therefore, Sally would not be able legally to claim a maternity payment. If you did pay her, the Department of Employment would refuse to refund the money to you.
3. In this case, since dates of confinement can vary, Trudy would qualify for payment.
4. The rule about giving the employer three weeks' notice is also a strict one, but as in this case, if it is not reasonably practicable to have given that notice, then payment should be made.

Take a break before beginning Section 8 which deals with health, safety and hygiene and the procedures for protecting the well-being of people and property in your workplace.

A particularly useful booklet is the *Employer's Guide to Statutory Maternity Pay*, D88 Leaflets, P.O. Box 21, Stanmore, Middlesex HA7 1AY.

The European Parliament's committee on women's rights has approved a draft directive giving pregnant women 14 weeks off on full pay (British women are at present titled to 90% of earnings for six weeks, followed by a flat rate payment of £39.25 a week for a further 12 weeks), and two weeks compulsory leave immediately before the expected date of birth (*Caterer and Hotelkeeper*, 27 December 1990).

SECTION 7
Protecting people in the workplace

After completing this section you will be able to:

- apply health, safety, and hygiene legislation to your workplace
- spot health, safety, hygiene and fire hazards in your workplace
- devise procedures to protect the well-being of people and property in your workplace.

RIGHTS AND RESPONSIBILITIES

People who reach a management or supervisory position in the hotel and catering industry should be aware of the on-going need for safe working practices and high standards of hygiene.

Do you need to refresh your memory? You are recommended to read all of the HCTC Mastercraft book, *Health, Hygiene and Safety in the Hotel and Catering Industry*. (Individual references are given where appropriate.) Other useful publications available from the HCTC include *Germ Warfare Operations Manual*, and the two *Foodcraft* books.

HEALTH AND SAFETY

The Health and Safety at Work Act, 1974, makes everyone at work responsible for the health and safety of those around them. But the main burden of responsibility falls on employers and their representatives — you!

Read units 12 to 15 of Health, Hygiene and Safety in the Hotel and Catering Industry, *paying particular attention to the duties of employers. Make a list below of the things for which you have a responsibility, including working conditions, equipment and procedures.*

You will recall that employers have a duty to look after the health, safety and welfare of their employees and of anyone else affected by their work, in so far as it is reasonably practicable. Your primary task is, of course, to ensure safety. But if your operation were to face prosecution for a breach of legislation, you might have to show the court that the precautions taken were 'reasonably practicable'.

Consider each of the following situations. Note below whether a court would consider each improvement 'reasonably practicable' and give the reasons for your decision.

1. *Problem: rubbish piling up inside prenises. Need for a skip or container at the rear of the premises.*
   Company defence: cost of buying a container and possible complaints from neighbours about an unsightly skip.

2. *Problem: temperature in workplace lower than is reasonable.*
   Company defence: increased energy cost could lead to lay-offs.

3. *Problem: damage to floor covering.*
   Company defence: high cost of relaying floor covering relative to low risk.

It must be said that in an exercise like this there can be no right or wrong answers as not all the circumstances have been described. Nevertheless, the exercise may help you to understand how the courts weigh up risk factors.

1. The court would probably say that the risk to health outweighs the cost. Some container should be provided, whatever the cost. Neighbours' complaints that the skip is not aesthetic would be considered irrelevant.
2. The employer's financial situation is probably irrelevant.
3. The risk to staff might reasonably be met by replacing parts of the floor covering rather than the whole.

However, fulfilling the legal requirements is not the only reason why you should maintain high safety standards in your workplace. Good safety management has many other benefits.

In the space below, note some ways in which good safety management could benefit your company.

Here are some of the factors you may have thought of:

- fewer accidents
- less ill health
- compliance with the law
- better working conditions
- better employee relationships
- lower absenteeism
- increased efficiency
- good public image
- profitability

Protecting people in your workplace makes good management sense. There are not only the legal penalties to be considered. Accidents are costly to employers in terms of lost working time and increased insurance premiums. But perhaps the biggest loss is in staff loyalty.

Staff will be more likely to leave if they feel that their safety is of less importance to the company than time or money. Recruiting replacements and training them to the required standard can be an expensive and time-consuming business.

THE HUMAN FACTOR

Working practices and procedures may appear to be satisfactory as long as nothing unforeseen happens. You have provided your staff with training and equipment. They know how to do their jobs and understand how to operate the relevant machinery. Surely that is enough?

But staff are not robots; they are human beings, and many accidents are the result of people making mistakes or acting in an unpredictable way.

The Accident Prevention Advisory Unit of the Health and Safety Executive has made a special study of the part played by 'human factors' in accidents. Among the human factors identified were:

- lapses of attention
- mistaken actions
- mis-perceptions
- mistaken priorities
- wilfulness.

> You will find it useful at this stage to view the *Mastercraft* video *The Human Factor*.

Consider for a few moments some of the unfortunate incidents in hotel and catering establishments you have come across or heard about — accidents, food poisoning outbreaks, fires and so forth — and note below what human failings might have led to the incident.

Although the Accident Prevention Advisory Unit addressed the problem of accidents, their observations about human factors would apply equally well to other hazards, such as fires and food poisoning outbreaks.

Lapses of attention An employee may be distracted or allow his or her attention to lapse. Hotel and catering establishments are busy places, and a person may be trying to deal with several jobs at once. If colleagues are clamouring for attention or demanding help, it is easy to see how attention could lapse, resulting in an accident.

Take the case of a chef who is slicing vegetables while he is trying to tell a trainee how to prepare a new dish. It is easy to see how his divided attention could result in an accident.

Mistaken actions Sometimes people don't realise that what they are doing is dangerous. Take, for example, some trainees who think it will be a great prank to throw a fellow trainee into a vat of water. What they do not realise is that the water is extremely hot, and the unfortunate trainee is badly scalded as a result of their horseplay.

Mis-perceptions Humans can only interpret situations in the light of the information that is available. Sometimes 'tunnel vision' or preconceived notions may lead us to wrong conclusions. Here is a real-life example of a mis-perception.

In a nursing home for the elderly, one of the residents became upset. She went to bed, and later got up and went out the front door. When the fire alarm went off, the night nurse, who was expecting the resident, thought it was the door bell and went to the front door. As there was no one there, she entered the sitting room to find out what was causing the ringing and tried to switch the bell off. Valuable time was lost before the fire brigade was called and the building evacuated. Three elderly women died.

On one level, what the night nurse did may seem ludicrous. Of course, she should have recognised it was the fire alarm and called the fire brigade immediately. Yet on another level, her actions are understandable. She was expecting the resident to come back, so when a bell rang she assumed it was the door bell. It was a human error.

Mistaken priorities Staff may feel that there is a conflict between safety and other objectives, such as a need to get on with the job or to save time or money.

Take, for example, a chef who is supposed to defrost a chicken for a special dish which is on the menu. He forgets, and anxious not to let the restaurant down or get into trouble with the manager, he quickly defrosts the chicken in hot water. Unfortunately, the chicken was already infected with salmonella, and as the bird is not properly thawed, the temperature in the body cavity is not high enough to kill off the bacteria.

Wilfulness It is difficult to tell whether a person is motivated by mistaken priorities or sheer wilfulness. Human beings do not always act from the best of motives. Everyone is lazy at times, so it is tempting to take a short-cut, if you think you will get away with it, or if you disagree with a particular safety rule.

Someone draining fat when it is hot, instead of waiting for it to cool, may do so to save time, but on the other hand, if there is no rush, this may simply be a wilful breach of safety practices.

Look through the last five accidents in your company's accident book. In each case, ask yourself which human factors, if any were involved. Note your findings below.

If the accident book does not contain enough information, ask the employees to describe to you in detail what happened.

A TOTAL APPROACH TO SAFETY

The Accident Prevention Advisory Unit maintains that 70% to 90% of all human factor accidents are preventable. Recognising that there is a limit to what an individual employee can do if equipment and conditions are inadequate, it urges management to formulate a total approach which will include equipment, conditions, the pace of work, good training and adequate supervision.

It sees management's role as twofold:

1. To create a climate in which all staff will consider health and safety to be of fundamental importance.
2. To make sure that all company policies and systems take human fallibilities into account.

The part which human factors play in accidents is examined fully in *Human Factors in Industrial Safety* (Health and Safety Executive) and *Managing Safety. A review of the role of management in occupational health and safety by the Accident Prevention Advisory Unit of HM Factory Inspectorate* (HSE Occasional Papers series, HMSO).

Although these publications are not specifically concerned with the hotel and catering industry, they contain many useful insights.

A CLIMATE OF SAFETY

Each establishment has its own particular climate with regard to health and safety. It may be one in which health and safety are valued and given a high priority. Or it can be a 'macho' climate in which risk-taking is condoned or even encouraged.

The attitude of management is critical in determining what type of climate prevails. When an individual chooses whether to risk his or her safety, that person will consider how big a risk is being taken. And the employee will weigh that against another risk — the reaction of the supervisor or manager. The employee may fear being branded as 'awkward' or even losing his or her job if he or she gets behind with the work or refuses to carry out a task.

Most people just want to get on with the job. They don't want to appear over-cautious especially if the danger isn't obvious. It is difficult for staff to keep safe if colleagues and superiors do not take safety seriously.

One risk, one short-cut taken may seem insignificant. The first time people may get away with it. But if staff continue to take risks, the safety structure of the company will gradually disintegrate and a climate will evolve where risk-taking is the norm. Eventually, there will be accidents.

The same human factors lead to minor accidents and major disasters like Chenobyl. The outcome appears to be a matter of luck. But what is certain is that risk-taking increases the likelihood of an accident. That's why it's vital to maintain a safety-conscious working climate.

Management must set excellent safety standards for the company and make sure that these are adhered to at all times. In all day-to-day operations, it should be clear that management is fully committed to safety.

If you are to foster a climate of safety in your workplace, this will have implications for the way in which the company is to be run. In the space below, list some actions which you may have to consider.

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ABSTRACT

This module on rights and responsibilities is intended to introduce the hospitality manager or supervisor to sound personnel management practices that comply with the law. The material is presented in a self-instructional format in seven sections. At the beginning of each section is a statement of the objectives that will be achieved as a result of working through the material that follows. Users of the module are asked to relate information given in the text to their own experience and knowledge. Where appropriate, suggested solutions to these questions are given on the opposite or following page. Topics are as follows: (1) the law and personnel procedures; (2) contracts of employment and work permits; (3) discipline, grievances, and disputes; (4) dealing with staff who are dismissed; (5) nondiscrimination and equal opportunities; (6) time off and maternity rights; and (7) protecting people in the workplace. (YLB)

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OPERATIONAL MANAGEMENT PROGRAMME

Personnel Management
MODULE

RIGHTS &
RESPONSIBILITIES

OPERATIONAL
MANAGEMENT
PROGRAMME

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OPERATIONAL MANAGEMENT PROGRAMME

HOW TO USE THIS UNIT

The material in *Rights and Responsibilities* is presented in a self-instructional format. It will help build on and consolidate the work covered in the one-day HCTC course of the same title.

Rights and Responsibilities is divided into seven sections. At the start of each section is a statement of the objectives you will be able to achieve as a result of working through the material that follows.

From time to time you will be asked to relate information given in the text to your own experience and knowledge. Space is provided below these activities for you to write your answers. Some suggested solutions to the questions are given on the following page.

You will also be referred to two related HCTC books:

- *Employee Relations* (7th edition)
- *Health, Hygiene and Safety in the Hotel and Catering Industry*, published with Macmillan Education as part of the *Mastercraft* series.

Delegates on the HCTC's course will receive a number of assignments relating to *Rights and Responsibilities*.

INTRODUCTION

The words 'rights' and 'responsibilities' are inextricably linked: they represent two sides of the same coin. All legal (and moral) rights carry responsibilities. For example, the right to receive a salary or wage also holds the responsibility for carrying out appropriate work for that pay. Whether something is a right or a responsibility depends on whose point of view is being considered. In the example just given it would be the employer's responsibility to reward each member of staff in the agreed manner.

Each manager needs to devise procedures which uphold rights and responsibilities while carrying out the objectives of the establishment, unit or operation. Some of those procedures will be shaped largely by operational demands and the manager's personal style of management. Others will be shaped largely by legislative requirements.

Rights and Responsibilities considers a variety of sound personnel management practices which comply with the law. It does not attempt to turn you into a walking legal encyclopaedia.

SECTION 1
The law and personnel procedures

After completing this section you will be able to:

- outline the legislative framework for personnel management
- give examples of the individual rights of people at work, and state some ways in which these may be affected by new EC legislation
- identify procedures appropriate to your workplace which meet legal obligations, and establish sound working relationships.

A century or so ago employers could do more or less what they liked. They could refuse to employ black, Jewish or Irish people. They could pay women at half the rate of their male colleagues. They could sack staff without explanation, ignore safety considerations and make a working day last 18 hours without guaranteed pay in cash.

Things have changed. Today's employees have a number of individual legal rights and some collective (union) rights. Although much of the employment legislation passed by Parliament in the last decade has been designed to remove some of the restrictions placed on employers by laws passed in the 1960s and 70s, managers must still grapple with many different applications and effects of the law.

(This unit only touches upon collective rights at work — the areas often called 'industrial relations'. If you would like a brief insight into these areas before you tackle the rest of this section, look at chapter 2 of *Employee Relations*, paying particular attention to the paragraphs on trade unions; and chapter 12, paying particular attention to the paragraphs on individuals and unions.)

THE LEGISLATIVE FRAMEWORK

There are two basic sources of law: *common law* and *statute law*. Common law has existed throughout our history and is the 'unwritten' rules of what is fair in everyday life. Trespass and negligence are typical examples. Common law derives from judges' decisions, while statute law usually comes from an Act of Parliament.

You are probably also familiar with the terms: *civil law* and *criminal law*. Civil law, whether common or statute, regulates the relationships between individuals. Defamation and breaches of contract come under this heading. Criminal law is concerned with an act or omission to do something, or to do something to a particular standard, laid down by common or statute law and subsidiary regulations. Forms of punishment are specified.

It is important to remember that, in practice, matters of dispute can often be dealt with under two forms of law. So a staff member who breaks a wrist at work because of a dangerous floor could sue you for damages in the civil courts, while an environmental health officer or health and safety inspector could prosecute you through the criminal courts for a breach of safety legislation.

Since 1964 there has been another important institution. This is the *industrial tribunal*, which has a status comparable to a Magistrate's or Sheriff's Court. Tribunals deal with almost all employment legislation in the first instance. Appeals from tribunals go to the Employment Appeal Tribunal, which has the status of a High Court. An industrial tribunal consists of an experienced lawyer in the chair with two lay assistants. (For further details read the paragraphs on industrial tribunals in chapter 2 of *Employee Relations*.)

Think about some of the more important individual legal rights which employees have and list them below.

The list is extensive. It might include these individual rights at work:

- statement of terms and conditions of employment
- equal pay and opportunities regardless of sex and race
- guarantee payment in the event of short-time working or lay-offs
- trade union membership
- time off for certain activities.

This list is obviously not comprehensive and it is important to note that within a particular right, there may also be *hidden rights*. For example, there is — depending on certain criteria — a right to payment for redundancy dismissal. Within this right there are also rights to:

- a statement showing how redundancy payments are calculated
- full notice or pay in lieu quite apart from the linked rights to:
  - a trial period in an alternative job
  - time off with pay to look for other work.

As you can see, individual rights at work are extensive. So take care!

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EC legislative programmes

During 1989, the EC summit at Strasbourg adopted the Community Charter of Fundamental Social Rights – the *Social Charter*. This took the form of a declaration of basic principles to be followed by binding proposals from the Commission.

The British Government was unable to support the Social Charter. Michael Howard, Secretary of State for Employment, writing in *Hospitality* September 1990, explained the three main reasons:

- the Charter would lead to an unnecessary increase in the number of employment rules and regulations; this would add to employers' costs, make them less competitive and make it harder for them to create new jobs
- the Government felt action should only be taken at Community level if the desired objectives cannot be achieved by member states at either national or local level
- the Charter did not take sufficient account of different national traditions and practices.

Of the 50 or so individual measures proposed under the action programme for the Social Charter, Howard commented that the British Government expected to be able to accept over a third, subject to more detailed clarification and the normal process of negotiation. There was another third of the proposals on which the Government had too little information to form a judgement. The remaining third raise 'fundamental difficulties for the UK'. These proposals include draft directives on the subject of part-time and temporary work, working time, maternity and paternity entitlements, health and safety regulations in the workplace, information and consultation of workers and standard contracts of employment.

- In general, part-time and temporary workers would have equality of treatment with full-time workers.
- All part-timers who work more than eight hours per week would be entitled to social security on the same terms as full-timers. At present many part-time workers earn less than the national insurance threshold. Under the new proposals staff in this situation would have to contribute to the NI fund, and so would their employers. The Government fears that many employers, particularly the small ones, could no longer afford to use part-time staff.

- Occupational pension schemes generally include people who work more than 16 hours per week. Having to include people working less than eight hours per week would involve a great deal of additional administrative work for little gain, the Government argues, and some employers, considering the price too costly, might wind up the scheme entirely, so that full-time staff would have to make private pension arrangements.
- Minimum daily and weekly rest periods are proposed for all staff. For part-timers, for example, this would be on a pro-rata basis according to the number of hours worked.
- Limits would be placed on the total hours (including overtime) worked by night workers over a period.
- Night work arrangements would have to be notified to health and safety authorities.
- Night workers would have free access to a medical assessment before beginning night work, and at regular intervals thereafter. Anyone experiencing health problems in connection with night work would have be to transferred to day work.
- Employees would not allowed to work overtime during what would normally be their daily or weekly rest period.
- All employees would receive annual paid holidays 'in accordance with national custom and practice'.
- Provision is likely to be made for special circumstances, for example to deal with an emergency or accident in the workplace, or seasonal fluctuations in trade. It may be possible for employers and employees to agree to spread the hours limits and rest periods over a longer period.

The Single European Market will make it easier for employees to take their pick of jobs, both in the hotel, catering, leisure and tourism industry, and in other industries. This is expected to lead to a demand for:

- better pay
- better training, particularly in languages
- better conditions of employment.

These issues are dealt with in more depth in the companion self-study unit *Staff Retention*.

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WHAT PROCEDURES MEAN AT WORK

A procedure is quite simply an acceptable way of carrying out some task. It may be the way in which dry goods are ordered, or the process by which new staff are recruited, or the way in which budgets are drawn up and agreed. A procedure provides everyone involved with a common pattern to follow so that efforts are co-ordinated and regulated.

In many cases the procedure is contained in a written form. This has the advantage of being a point of reference and guidance. But many procedures are unwritten although nonetheless established. This wide range of ways of doing things is simply a reflection of the variety and complexity of forms of social organisation.

In some cases the procedure is an imposed one, laid down by the law or an authority. In other cases it is an agreed process among those who operate or are affected by it. The effectiveness of any procedure is not dependent so much on the origin as on the acceptability and goodwill of those involved. The really successful procedures closely conform with the views of those who must observe them.

Any new procedure should be shaped by the needs it is designed to meet and by the experience of similar procedures. It needs to have some flexibility to adapt to new needs as they arise and yet be capable of consistent application.

In any workplace, even the smallest, it is necessary to provide orderly, consistent and known methods for dealing with working relationships. In this way problems can be tackled and differences resolved in a way that can be seen by all to be consistent and fair.

Make a list below of at least three reasons why you think it is necessary to have procedures at work. You may find it helpful to consider the reasons from:

a) the employer's viewpoint
b) the viewpoint of the staff.

From the employer's viewpoint:

- Basic rules reduce the risk of inconsistency.
- Proper procedures show commitment to fairness.
- Procedures provide continuity even when managers and staff change.
- Where there is more than one level of management, a procedure helps to define the authority at each level.
- Where the existence of a procedure is statutory or legally advisable, it enables the company to keep within the law.

From the viewpoint of the staff:

- A procedure provides a means of resolving an individual or group difficulty.
- It gives a greater sense of security and confidence of fair treatment.
- It allows those issues of importance to staff to be aired and recognised by management.

Consider how workplace procedures might help deal with the issue of smoking. In areas where food (in this context, food includes drink) is prepared or handled, there is generally an outright ban on smoking. This is not only seen as a desirable safeguard, but necessary to comply with the food hygiene legislation.

However, what would happen if management sometimes turned a blind eye to smoking while the restaurant was being cleared after service, for example? Or the manager, a heavy smoker, often lit up a cigarette in the chef's office? Rules and procedures have to be applied consistently and fairly if they are to be respected. If a particular rule or procedure has been allowed to fall into abeyance, or become ignored, then clear and adequate warning must be given before it is brought back into force.

An increasing number of people find smoking offensive. Some members of staff may prefer smoking to be forbidden in the offices, staff rest rooms and so forth. At what stage, and in what manner could a general ban on staff smoking be introduced?

For new employees who join an establishment where a no-smoking policy is already in force, and forms part of the contract of employment, there is no problem. Nor is there a problem where all existing employees agree to such a policy.

But what happens if a no-smoking policy is introduced, and some existing employees refuse to accept it? Only a carefully thought-out procedure can help avoid and deal with such difficulties:

- **encourage employees to themselves adopt and promote a no-smoking policy**
- **explain the circumstances to individual employees who may disagree with the new policy**
- **decide and make clear how you will deal with employees who do not comply with the new policy. This might mean waiving the rule for those individuals, or eventually dismissing them (having given a fair and reasonable period of notice, written warnings, the right of appeal, consulted with trade unions and so forth).**

FORMAL AND INFORMAL PROCEDURES

In those establishments which work with recognised trade unions, it is likely that many procedures will have been formalised and documented. At the other end of the spectrum in small, non-unionised firms, the likelihood is that the agreements will be quite informal and ad hoc, with staff free to chat to the boss over a cup of tea. In practice in the hotel and catering industry, it probably amounts to an amalgam of both the formal and informal, but all companies must have some form of grievance procedure — a formal arrangement is required by law.

Because of the nature of the industry and the generally relaxed interaction between managers and staff there are usually plenty of opportunities for informal discussions and so the idea of formalising some procedures may seem redundant. However, there are real dangers in accepting the idea that problem-solving can best be left to an ad hoc approach.

Unless you have always worked in establishments where all the procedures have been formalised, the chances are that you have experienced management/staff relationships which were left almost to chance and seen problems in these relationships solved more by good luck than design.

Note below some of the difficulties you have experienced when such problem-solving has been left to ad hoc arrangements.

Ad hoc arrangements can sometimes help solve a problem quickly. This is important, but in the long term difficulties can arise stemming from:

- differences in treatment at different times and in different departments
- uncertainty among staff and managers about what the rules actually are
- lack of understanding about who is responsible for what
- the same rules being interpreted differently, even by the same people
- the dangers arising from believing that problems are being solved 'over the heads' of those who think they should have dealt with them.

CONSULTATION

Let's start with a fact: no one has a monopoly of good ideas. This is especially true in hotels and catering where there are so many diverse skills and such a wide range of interactions. If the success of a business depends upon everyone who works in it, then it is clear that there is a need for a forum to exchange ideas. However, precautions must be taken to ensure that any meeting established under this banner does not generate into a gossip session or a get-together for moaners! This means that, to be effective, the consultative procedure needs to be properly constituted and its purpose made clear to all participants.

Consultation is not the same thing as communication, which happens to some degree whether it is planned or not. The specific ingredient that differentiates the process of consultation is that it is an exchange of ideas on a topic which affects the staff and the business with a view to finding a solution that is acceptable to both sides, before a decision is reached. It is not a form of negotiation. There should be no element of bargaining, no seeking to exchange one thing for another, no quid pro quo.

In essence, consultation is pre-planned discussion with staff to obtain their views and their feelings on a subject which may or may not lead to a change in practices, policy or procedures, but about which no decision has yet been reached.

SECTION 2
Contracts of employment and work permits

... AND DO YOU AGREE THAT THE AFORE-MENTIONED THIRD PARTY HEREAFTER KNOWN AS THE COMPANY WHEREAS INSOMUCH THAT THEREBY UNTIL THE .....

After completing this section you will be able to:

recognise your legal responsibilities when taking on staff

prepare a written statement of their terms and conditions of employment.

THE LAW AND TAKING ON STAFF

A contract of employment is made between an employer who agrees to pay wages and an employee who agrees to work for those wages.

In law there must be:

- an offer
- an unconditional acceptance of that offer
- and the intention of the parties to accept the resulting agreement as binding.

When an agreement is reached a legally enforcible relationship comes into existence called 'a contract'.

Look at the examples below and tick the ones which you think could be described as creating a contract in law.

☐ 1. *A regular customer offers to sell you her car for £2500 and you agree to buy it.*

☐ 2. *A representative from a drain cleaning company calls to see you. He describes the service provided by his firm and you agree to use him 'if and when required'.*

☐ 3. *You offer your customers the opportunity of a catering service for special occasions to be provided by you at their homes. Your standard charge for a dinner party is £20 per person. Mr Mbata says he would like to take advantage of this service for the following week but says he only wants to pay £15 per head.*

☐ 4. *After enquiry, Mrs Lindgren books a double bedroom for two nights at the bargain price advertised.*

1 and 4 are both binding contracts since there is both a firm and definite offer from one party, and a clear and unconditional acceptance from the other.

In example 2, there is only an intention to enter into a contract which is not binding. No contract will exist until you contact the firm and ask to use their services.

In example 3, Mr Mbata does not accept your offer. Instead he makes a new offer of his own (called a counter-offer in law) so there is no unqualified acceptance and therefore no contract.

The fourth element the law requires is that there should be an exchange, or the promise of an exchange (called consideration in law). In employment contracts this is the exchange of work for wages.

THE CONTRACT OF EMPLOYMENT

A contract of employment is made between the employer and the employee in the same way as any other contract in law if there is:

- an offer of employment by the employer
- an acceptance of the job
- the promise to pay a wage in return for the promise to work.

As a general rule, contracts do not have to be in writing. If you make a valid offer of employment to someone, this will be a legal contract if the person:

- writes to you accepting the offer for the agreed wage
- says to you that he or she accepts the post for the agreed wage
- turns up for work on the agreed date.

In other words once a job offer has been made and accepted for an agreed wage, then a legally binding contract of employment exists.

Tick the examples below which are legally binding agreements.

☐ *1. You offer Glafkos employment as 'casual staff' as and when needed.*

☐ *2. You write and offer a job to Fiona on Monday but decide against her on Wednesday when you write again to withdraw the offer. Her letter of acceptance crosses in the post with your withdrawal letter.*

☐ *3. You write to Joan to offer her the job at £180 a week. She then replies and accepts providing you raise the salary to £200 a week.*

☐ *4. Rick offers to work without wages 'to gain some experience'.*

1. There will be no contract until you offer Glafkos a specific job and he accepts.
2. A contract of employment comes into existence the moment Fiona puts her letter of acceptance in the post box, and you cannot then withdraw your offer. Fiona could claim payment for breach of contract, at the very least an amount to cover the usual period of notice.
3. Joan made a counter-offer and no contract will exist until agreement over her wage is reached.
4. There is no contract because the employer is not supplying any consideration and there is no intention to enter a formal contract of employment.

THE WRITTEN STATEMENT

By law – Employment Protection (Consolidation) Act (1978) – every new full-time employee must, within 13 weeks of she or he starting to work for you, be given a statement of the terms and conditions of employment. This is evidence of the terms of the employee's employment with you and it *must* be in writing. If however, you set out in writing all the terms and conditions at the time you make a formal offer to the employee, you do not need also to give her or him a written statement. But, whichever you choose to do, two copies of the offer-letter or the statement should be signed by the employee – one copy should be returned to you for your records — the other retained by the employee. The written statement must contain the following information:

1. The full names of the employer and the employee.
2. The date employment began. If the employment is for a fixed term – the date it is to end.
3. The date on which the employee's period of continuous employment began (because you have taken over an on-going business, for example).
4. The scale, or rate of pay and how the wage is calculated. You may include any fringe benefits here. Remember also that an employee has a right to be given an itemised pay statement.
5. The interval at which wages are paid – weekly, monthly or whatever.
6. Any terms and conditions relating to hours of work – including normal working hours. (You should consider whether you need to include any reference to overtime working here.)
7. Terms and conditions about holidays and holiday pay, including public holidays.
8. Terms and conditions relating to periods off work because of sickness or injury. (You may include here any details you need about notification of sickness, medical certificates and so forth.)
9. Sick pay arrangement.
10. Any pensions or pension scheme – if there are none, say so.
11. Length of notice which employee must give and which she or he is entitled to receive.
12. Job title – The law does not require a job description, but you should think about including one – perhaps on a separate document to which you can refer. You are not required by law to state the place of work, but it is a good idea to do so.

13. If you have more than 20 employees you must include a note on any disciplinary procedures or refer them to another document containing these rules.

14. If you have 20 or more employees you must also include a note stating to whom an employee can apply if she or he is dissatisfied with any disciplinary decision relating to her or him – or if there is an agreed procedure, what that procedure is. This can be in a separate document.

15. A note informing the employee to whom she or he may apply if she or he has a grievance or, if there is an agreed grievance procedure – what that procedure is. (This provision applies to all employers – small or large.)

An employee working at least 16 hours a week, or eight hours a week for at least five years, is entitled by law to a minimum period of notice of termination of employment depending on how long she or he has worked continuously with the company:

- one week after one month
- two weeks after two years
- three weeks after three years
- one week extra for each additional year of service up to a maximum of 12 weeks after 12 years' continuous service.

However employees who have a contract for three months or less, such as seasonal staff, are not entitled to a week's notice unless they actually work for more than three months. This should be made clear at the time of the appointment.

An employee is required by law to give the employer one week's notice after one month's service.

Many employers give, and require from the employer, a longer period of notice, and this is perfectly acceptable provided it is agreed as part of the original contract.

Over the page is an example of a written statement (reproduced from *Employee Relations)* containing all the information an employer is obliged by law to give.

Introduction

Part I of this statement sets out particulars of the terms and conditions on which I ... (*name of employer*) ... am employing you ... (*name of employee*) ... at ... (*date on which statement is issued*).

Part II of this statement sets out information on disciplinary rules, whom you should contact if you wish to appeal against a disciplinary decision or to take up a grievance, and the subsequent steps to be followed in the disciplinary and grievance procedures.

Your employment with me began on ... (*date*). Your previous employment with ... (*name of previous employer or employers*) ... counts as part of your continuous period of employment which therefore began on ... (*date continuous period of employment commenced*).

Alternatively

Your employment with me began on ... (*date*). Your employment with your previous employer does not count as part of your continuous period of employment.

PART I

1. You are employed as a ... (*insert job title*).
2. Scale or rate of remuneration, or method of calculating remuneration and the intervals at which remuneration is to be paid ... (*give details*).
3. Normal hours of work and any other terms and conditions relating to hours of work ... (*give details*).
4. Holidays and holiday pay ... (*give details*).
5. Terms and conditions relating to incapacity for work due to sickness or injury and sick pay (*if none, say so*) ... (*give details*).
6. Pensions and pension schemes (*if none, say so*) ... (*give details*)... (*also state whether a contracting-out certificate under the Social Security Pensions Act 1975 is in force*).
7. Amount of notice of termination to be given by:
   (a) The employee ... (*give details*).
   (b) The employer ... (*give details*).

   (*If the contract is for a fixed term no period of notice should be given but the date on which the fixed term expires should be stated.*)

PART II

1. The disciplinary rules which apply to you in your employment are ... (*explain them*).

Alternatively

1. The disciplinary rules which apply to you in your employment can be found in ... (*here reference should be made to a handbook or other document which is given to the employee with the written statement and additional note, or, if that is not practicable, can be read by the employee in a place to which he or she can gain access without difficulty*).

2. If you are dissatisfied with any disciplinary decision which affects you, you should appeal in the first instance to ... (*give the name of the person to whom the appeal should be made, or the position which he or she holds, for example, supervisor*).

3. You should make your appeal by ... (*explain how appeal should be made*).

Alternatively

3. The way in which appeals should be made is explained in ... (*refer to an accompanying handbook or document which is reasonably accessible to the employee*).

4. If you have a grievance about your employment you should apply in the first instance to ... (*give the name of the person with whom the grievance should be raised or the position which he or she holds, for example, personnel officer*).

5. You should explain your grievance by ... (*explain how grievances are to be raised*).

Alternatively

5. The way in which grievances should be raised is explained in ... (*refer again to an accompanying handbook or, if necessary, another document which is reasonable accessible to the employee*).

6. Subsequent steps in the firm's disciplinary and grievance procedures are ... (*explain them*).

Alternatively

6. Details of the firm's disciplinary and grievance procedures are set out in ... (*refer to an accompanying handbook or, if necessary, another document which is reasonably accessible to the employee*).

Note that the separate stages outlined in Part II can be telescoped where, for example, the same person is the first to be approached for appeals against disciplinary decisions and grievances, or where the method of application for both is the same.

Many employers use the written statement to give additional information to their staff about their terms of employment, in addition to those required by the law. You should think whether you need to include any other information, such as:

- the conditions under which accommodation, meals and uniforms are supplied
- the terms of joint contracts, between husband and wife
- continuity of employment (especially for seasonal and casual staff)
- maternity rights.

You should also give new employees a copy of your health and safety policy statement and any other rules about health, welfare and safe working practices. This can be in a separate document (see Section 7).

At some time you will want to change employees' terms and conditions, for instance to give them a pay rise, or change hours of work. You can include a clause in your statement or offer letter allowing you to do this but you must tell your employee about the changes. You do not have to write to each member of staff individually (although it is good practice to do so). It is sufficient in law to put up a notice about the changes in an obvious and accessible place.

If you change an employee's terms and conditions without his or her agreement you could be breaking your contract. If an employee is then forced to leave the job because he or she cannot accept the changes, the employee could claim to have been unfairly dismissed.

Compare the written statement issued to employees in your workplace with the example just given, and make a note on the page opposite of any improvements which might be made.

WORK PERMITS

Most overseas workers require a work permit in order to take up a job in the UK. Nationals from the European Community are an exception and do not need a work permit, except for those from Spain and Portugal who will continue to need a permit until 1993. (Countries must have been members of the EC for at least five years before the work permit rule is lifted.)

To qualify for a work permit, the overseas worker should normally be aged between 23 and 54 years. Permits are issued only for employment requiring highly skilled and experienced people in hotel, catering and leisure work. An applicant should have successfully completed full-time training of at least two years at an approved hotel and catering school abroad or, in the exceptional case, have relevant specialised or uncommon skills and experience.

Other requirements to qualify for a work permit are:

- a genuine vacancy exists
- there is no suitable labour in the UK to fill the vacancy
- the employer has made adequate efforts to fill the vacancy from suitable candidates living in the UK or EC countries which do not require a permit
- the application is for a named person for a specific job
- the pay and conditions of employment are at least as good as those offered in the area for similar work
- the overseas worker's qualifications, skills and experience were acquired outside the UK
- the overseas worker has an adequate knowledge of the English language.

None of these restrictions applies to nationals from EC countries (except Spain and Portugal).

> The Department of Employment announced in 1989 plans to relax the rules on work permits, in particular those applying to senior level transfers within a company, those bringing investment and job creation to the UK and those concerning scarce high level skills. The Department has also proposed making work permits effective for four years rather than one year as at present.

SECTION 3
Discipline, grievances and disputes

After completing this section you will be able to:

- describe the value of disciplinary, grievance and disputes procedures in personnel management
- play an appropriate role in establishing and maintaining suitable disciplinary and grievance procedures for your workplace.

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THE MEANING OF DISCIPLINE

The very word 'discipline' has an unfortunate connotation because it usually suggests some form of punishment. Yet, if you check a dictionary, you will find several meanings — and probably the last meaning given is that of retribution. As a manager, it is important you concentrate on the real primary meaning of discipline as a form of instruction — a constructive measure used to help someone change his or her behaviour to a more acceptable, more productive form. The idea of punishing someone should be forgotten.

Most managers would readily agree that it is part of their everyday duties to supervise staff, control staff and, if necessary, correct staff. People make mistakes, behave carelessly or wilfully, or refuse to conform to the standards that have been set. In such circumstances it is a manager's job to correct, to reprimand, to take steps to put matters to rights. This type of everyday discipline is not dealt with here. Disciplinary procedures exist to deal with the person who needs more than a word-in-the-ear approach. A more formal approach must be taken with this sort of 'offender'.

If there is one feature that characterises the whole of this subject, it is the need to be fair. Staff themselves have a strong interest in seeing that discipline is maintained — they see it as fair that their safety should not be jeopardised, that their pay should not be affected by a maverick who will not conform to standards that they happily accept as reasonable. In addition, everyone seeks fairness in the consistency of treatment he or she receives.

For these reasons, clearly established rules and standards of work behaviour, and an agreed method of dealing with offenders are matters of common interest to employer and employees alike. This is the true justification for having a disciplinary procedure.

In addition, if you have 20 or more employees, it is a legal requirement that you have a written code of disciplinary rules and procedures. Following this code of practice will ensure that you are seen by any court or tribunal as acting as a fair and reasonable employer.

WORKPLACE RULES

Most people like to know what the 'rules of the game' are and accept that the alternative is chaos. At work there is always a set of standards with which people are expected to conform — what people do or don't do. Many standards are not written down at all, but they are there and staff are aware of them.

However, it is not really feasible to expect that the element of fairness will prevail or be seen to be applied if all the rules are left to a general awareness. It therefore makes sense to codify company rules, not in the effort to cover everything comprehensively, but to provide a framework within which everyone can work comfortably.

Under the following general headings, write down some sample rules that you believe should apply in your workplace:

1. *Punctuality*

2. *Respect for other staff*

3. *Respect for property (employers' and employees')*

4. *Safety of colleagues and customers*

The range of your answers is likely to be wide, but may include some of the following points.

1. Need to report to work in accordance with duty rota.
   Observation of stated lunch and other breaks.
   Rules about changing times of work and on whose authority.
2. Rules on physical violence and abusive language.
   Maintenance of good hygiene standards.
   No mis-use of company and staff noticeboards.
   Rules on gambling.
3. Rules on abusing, defacing or damaging property.
   Use of company telephone for personal calls.
   Use of company vehicles.
   Theft of company or colleague's property.
   Mis-use of company time.
4. Rules on smoking.
   Rules on safety at work.
   Rules on hygiene and fire regulations.
   Rules on security.

BREAKING THE RULES

Once you have sorted out what you consider to be a sensible sample of the main rules to be observed, it is useful to consider the categories into which breaches of those rules might fall, depending on their degree of seriousness. Three categories might be considered:

- minor offences
- serious offences
- gross misconduct.

The value of this approach is that when you come to devise a procedure for handling matters of discipline, you can arrange it around this categorisation. Of course, these are not watertight compartments: a person who is late for work may have committed a minor offence. But if he or she persists in being late then that can soon be considered a serious offence.

DEVISING A DISCIPLINARY PROCEDURE

Having considered the rules to be enforced and the way in which offences may be categorised, it is time to start thinking how best to create a procedure. The best advice you can get here is to be found in the ACAS code on *Disciplinary Practice and Procedures in Employment*. The code is not a law. But, as with the *Highway Code*, its guidance can be taken into account in a court of law or by an industrial tribunal. ACAS has also published an advisory handbook, *Discipline at Work*. This handbook complements the code by providing more practical guidance, and takes account of case law and the development of good practice since the code was first produced.

Undoubtedly in disciplinary matters, more perhaps than anywhere else, you will find a written procedure a great help in establishing norms, in letting staff know where they stand and in helping trade union representatives look after the interests of their members in a disciplinary situation. An explanation of the disciplinary rules and procedures should form part of every new employee's induction programme.

Turn to chapter 14 of Employee Relations *and read the section on drawing up a disciplinary procedure. Then turn to Appendix IV and read the ACAS code. Don't worry for the moment about references to grievance procedures. These are covered later in this section.*

Now look at the extract from a company's disciplinary procedure on the next page. What conclusions can you draw from this extract? List below the points you consider to be of significant value in a disciplinary procedure.

ABC Ltd

Disciplinary procedure

1. The rule is that staff must start work on time and continue to work through until the end of the shift.
2. The offences are defined as:
   a) two days unauthorised absence in any four week period or less, and
   b) lateness in excess of the three minute allowance on more than one occasion in any one week.
3. The following are the disciplinary measures to be applied:

   First occasion

   Caution by the unit manager to be recorded in department's records.

   Second occasion

   Warning by unit manager in presence of shop steward and a written warning sent to offender by the personnel manager.

   Third occasion

   Suspension from work for two days without pay by the unit manager in the presence of the shop steward.

   Fourth occasion

   Suspension from work for two days without pay by the unit manager in the presence of the senior shop steward.
4. All warnings under the procedure will be deleted from the records after eight working weeks in which there have been no instances of unauthorised absence or lateness.

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Clearly, this company has a problem with lateness and absenteeism among its staff or the nature of the operation is such that work is seriously hindered if someone turns up late or fails to turn up at all. The following points of value are illustrated.

- It makes a clear distinction between rules, offences and disciplinary measures.
- It indicates that the treatment to be accorded to minor offences may be quantified.
- It illustrates how repetition of offences incurs increasingly severe punishment.
- It provides for the commonest sanctions: warning and suspension.
- It differentiates between the formal verbal warning and the more serious written one.
- It allows for the registering of sanctions.
- It provides a 'clean slate' provision to encourage offenders to reform.

WARNINGS

The ACAS code of practice is the main source of advice on warnings. One important point to note is that a written warning should never be given until the offender has been interviewed formally and given a chance to have a say. It is at this stage that the employee should be told formally where he or she is showing a short-fall in standards, with the evidence to support it. The employee's explanation should be sought. The ideal is to get a two-way conversation flowing to cover all the points necessary and to ensure that the employee knows what has to be done to improve. It is advisable to allow the employee to be accompanied by a union representative, or by a friend. If the employee has difficulty understanding English it is particularly important that a third party is present to reduce the risk of language difficulties causing misunderstandings.

The warning letter should then act as a written note of the interview.

Suppose that the extract from the disciplinary procedure on page 22 is part of your company's procedure. With the ACAS code of practice to assist you:

(a) Draft a first written warning letter to one of your staff.

(b) Imagine that your employee's time-keeping has not improved and draft a final warning letter below. Use any imaginary details to help.

No sample letters are supplied since everyone tackles letter writing in their own way. However, check your attempt against this list.

- Did you refer to an informal chat, held earlier, to try and stop the lateness?
- Did you specify the date of the formal interview leading to the letter?
- Did you specify the occasions of lateness resulting in the disciplinary interview?
- Did you refer to any explanation given by the offender and repeat what you replied during the interview to the reasons/excuses/explanations given?
- Did you specify precisely what needed to be done in future?
- Did you give a time limit for improvement and for a review?
- Did you warn what would happen if no improvement was made?
- Did you remind the offender of the appeal system if he or she was dissatisfied with your findings?

Remember that discipline is a management tool which can work well in increasing the efficiency and profitability of your workplace, provided it is seen primarily as a means of instruction. If it is used as a means of punishment, then it is likely to operate against your best interests.

Use the ACAS code of practice to measure your present disciplinary procedure with a view to putting right what may need doing. If you do not have a proper procedure, then use the code to assist you in drawing one up, even if you are not required by law to do so.

GRIEVANCE PROCEDURES

A grievance procedure allows an individual at work to make a complaint or raise a query affecting working conditions — such as pay, hours and holidays — and lays down the steps to be taken to resolve such a grievance.

An employee's written statement of employment should cover disciplinary matters (see Section 2). The statement must also state to whom a grievance is to be taken and all the steps involved. To that extent, it can be said that a grievance procedure is required by law. But it is also good management practice to provide some outlet for an aggrieved individual to air a worry or complaint. If not, then staff who feel hard-done-by will simply leave. Or, if they fear unemployment, they may stay on — but in doing so they are likely to moan to the wrong people, spread their dissatisfaction and probably work with little or no enthusiasm.

Most grievances can be settled fairly quickly and successfully. It is often a matter of correcting a misunderstanding. It may provide the manager with information about something that has gone wrong and of which he or she was unaware. Or it may just be a chance to get something off the employee's chest. Even in the few cases which are not happily resolved, at least the individual employee can see that his or her concerns have been noted by management.

Grievance procedures should be tailored to the requirements of the establishment and the staff employed there. They should provide:

- the facility to take the complaint, in the first instance, to an immediate superior
- the procedure for taking the matter to another level of management if it is not resolved at the first level
- a built-in timescale at each level
- the right for the employee to be accompanied at some stage by a trade union representative or friend
- a clear indication of where the final decision lies.

Generally, the role of supervisors or first line managers is crucial. Their responses will be conditioned both by their ability to settle the matter and by their readiness to do so. A lot depends on what authority they have in the subject of the complaint: they may, for instance, have no say at all in matters of overtime. But good supervisors will keep involved with the issues even if they do not have the authority or ability to resolve the problem.

Guidelines on preparing a grievance procedure for non-union employees

1. The procedure must be available, in writing, to the employee, his/her superior(s), his/her workplace representative (if any) and the company management.
2. Where possible, the procedure must form part of the employee's personal copy of the written statement of terms and conditions. Otherwise, it must be accessible at all reasonable times.
3. In the event of a grievance arising, either as a result of a management decision to alter the means, method, material or other aspect of the job, or as a result of a claim put forward by the employee for some change in the terms, conditions, fringe benefits or pay associated with his/her job, then the arrangement existing prior to the grievance shall operate until such time as that grievance is settled satisfactorily. Notwithstanding this, the employee shall be required to accept such reasonable change in his/her job as is specified in the written statement of terms and conditions of employment.
4. In the first instance, the grievance shall be discussed with a view to resolution by the employee's immediate superior. This should take place as soon as possible after the occurrence of the grievance:
   a) The maximum time lag should be ..... days.
   b) An account of the meeting setting out arguments on both sides and the factual background and the outcome shall be put in writing within ..... hours of the first stage, by the supervisor. This report is to be signed by both parties.
5. In event of a failure to agree, there must be one or more further stages, involving progressively higher heads of management.
6. Provision must be made for external arbitration or conciliation — to be co-determined with the employees — and use should be made of local ACAS officers and other advisory personnel.
7. In the absence of an arbitration stage, failure to arrive at an agreement after the final procedure stage shall entitle the parties to take such other stages as they consider appropriate to arrive at a mutual conclusion.

Compare your grievance procedure with the guidelines on the previous page (designed for non-union staff). Can you identify any points which might usefully be incorporated in your procedure? What advantages and disadvantages do you see in including time limits in a grievance procedure? What is your view about recording the stages of the procedure?

As far as time limits are concerned, it is obvious that individuals want their complaint sorted out as soon as possible, but managers may feel they need time to gather the facts and consider what action to take — and this to be fitted in with other tasks. Time limits commit managers to finding solutions quickly. If they fail to meet the deadline, then the procedure may allow movement to the next stage. Some say that time limits undermine mutual trust. Others claim that they remove flexibility. In the end, the best procedures lay down time guidelines but allow for extensions by mutual agreement.

As far as documentation is concerned, it seems reasonable to expect something to be put in writing if the procedure may be taken to higher levels where little may be known of the claims and evidence in support. In addition, in situations where there is a failure to agree at any stage, the record will clarify the facts and contentions and be helpful at the next stage. Records can help keep track of unresolved grievances; they can help in the analysis of the causes of grievances and of where and why delays in settling them occur; and they can be particularly useful when a settlement is reached to ensure there are no misunderstandings. Finally, a written statement is clearly useful in communicating the outcome of the procedure.

DISPUTES PROCEDURE

A grievance might well affect a number of staff at the same time, such as the temperature of the kitchen or the allocation of overtime. In these circumstances it is possible to invoke a disputes procedure.

A disputes procedure is similar in operation to a grievance procedure, but there is a wide variety of application throughout industry — determined to some extent by the definition of a 'dispute'. In some cases a dispute exists only when a group of staff are affected. In others, as soon as a grievance involves the shop steward then it becomes a dispute. Still others call it a dispute if a grievance is not settled within the company and has to go to an external agency for resolution. Finally, some call it a dispute only when there is a breakdown in procedure.

In practice, a grievance procedure can easily be used or adapted to form a disputes procedure.

A final point on this procedure: if you find yourself in consultation with a trade union about establishing a procedure, whether to be called a grievance or a disputes procedure, you are likely to find yourself being asked to incorporate a 'status quo' clause.

If you are not familiar with the meaning of the term 'status quo', look it up in a good dictionary. What does it mean to you in employee relations terms? Note why you think trade unions are likely to be anxious to incorporate a 'status quo' clause in grievance/disputes procedures.

'Status quo' is a Latin phrase that means 'no change'. In fact the full phrase is 'status quo ante' and this means 'the state of things as they were before'. In industrial and employee relations terms, what it means when it is incorporated in a procedure is that the conditions applying immediately before the grievance or dispute was raised will continue to apply until the procedure is exhausted.

Trade unions are usually anxious to have a 'status quo' clause because they believe that many disputes at work are caused by management, such as those involving discipline, manning and redundancies. If there is no status quo, then that allows management to initiate changes and to require staff to operate those changes (even though they may be subject to dispute) while the procedure is gone through. Unions consider that unfair. So, in a nutshell, the unions often argue that it is their role to control working conditions as much as possible to protect workers from insecurity and any adverse effects of management decisions. They also argue that they believe in the principle of mutual agreement or joint regulation and having a status quo during negotiations is a practical way of ensuring that decisions are mutual and not made unilaterally by management.

Section 4 deals with procedures for staff who leave your employment voluntarily or who have to be dismissed.

SECTION 4
Dealing with staff who (have to) leave!

After completing this section you will be able to:

- state what is meant by the terms 'dismissal', 'unfair dismissal', 'constructive dismissal' and 'redundancy'
- describe the general procedure for dismissing an employee fairly
- state the special factors that have to be taken into account in dismissals on grounds of capability or ill-health
- state the main points which should be included in a redundancy procedure
- counsel staff who are made redundant.

REASONS FOR LEAVING EMPLOYMENT

Some staff turnover may be necessary for a healthy business but unnecessary staff turnover will involve the operation in extra costs and reduce efficiency.

What do you know, or suspect to be, the most common reasons for staff leaving your/your employer's employment? (Do not include the 'unavoidable' reasons such as retirement or a move away from the district.)

Your list will vary according to a variety of local factors. Here are some of the most common reasons given by staff for leaving:

- the need to improve or enlarge the job
- an unsatisfactory level of pay
- lack of training and development
- a personality clash
- dislike of awkward or unsocial hours
- the distance and/or cost of travelling to work
- sense of being fed up

Many organisations find it useful to interview all staff who propose to leave 'voluntarily' in order to establish the reasons and record them in their staff turnover file. Here are some guidelines:

- Make sure you have found out as much as you can about the leaver and have his/her personal record at hand.
- Start by expressing genuine regret, if that is valid.
- Explain that the interview is to try to identify any cause of dissatisfaction which you may be able to rectify for the benefit of those staying on. Explain that you are not seeking to dissuade the employee from leaving — although remember that he or she may really be seeking reassurance about his or her value and may wish to be dissuaded!
- Prepare a number of open-ended questions which will help the interviewee to open up and be honest with you in describing the reasons for leaving.
- Whatever happens, do not engage in argument or allow the conversation to become heated. Maintain a friendly atmosphere throughout.
- Complete the interview with thanks, if appropriate, for services given. In any case wish the leaver success in whatever he or she plans to do next.

STAFF WHO DO NOT LEAVE BY THEIR OWN CHOICE

It is not always the employee who decides to finish his or her employment. From time to time, organisations find it necessary to dismiss staff or to make them redundant. The legal implications of dismissal and redundancy are far-reaching and require special procedures and management skills. The rest of this section looks at dismissal and redundancy in detail. You are recommended to read all of chapters 15 and 16 of *Employee Relations*.

WHAT DISMISSAL MEANS

The law protects employees against unfair dismissal. Under certain circumstances, an employee can claim unfair dismissal at an industrial tribunal. If the dismissal is found to be unfair, the employer may have to financially compensate, re-employ or re-instate the dismissed employee.

> Read the section on industrial tribunals in chapter 2 of *Employee Relations*.

As you can see, it is important to be able to recognise a dismissal!

The Employment Protection (Consolidation) Act 1978, describes how dismissal covers three separate situations:

1. Termination of employment by employer, with or without notice. For example: 'You're fired immediately.'
2. Non-renewal of a fixed term contract when it expires. For example: 'When you have finished your three months' employment, as agreed, you will no longer be required here.'
3. An employee terminates his or her contract, with or without notice, in circumstances such that he or she is entitled to terminate it without notice by reason of the employer's conduct. For example: 'There's no way I'm going to continue working for you now that you've cut my hours from 30 to 10 a week!'

Decide in the following instances whether or not there has been a dismissal, noting below the reasons for your answers.

1. *Employer: 'That's it! You're finished with me.' (Said with anger.)*

2. *Employee: 'All right then: you have my resignation!'*

3. *Employer: 'Get out!'*

4. *Employer: 'You have two options: either we call in the police or you resign.'*

5. *Employer: 'If you're innocent, and I don't think you are, it is foolish to pack up your job. If you are not innocent and they prosecute, there is nothing I can do.'*

6. *Employer: 'This restaurant will be closing so it might be a good idea if you look for another job.'*

1. If you have hedged your bets with this answer by saying that it would depend on all the circumstances, then you are probably right. This holds good in most cases. However, in this case a tribunal is likely to have found that this was not a dismissal, not only because the words were spoken heatedly but also because the words themselves are ambiguous. A dismissal should be clear and unambiguous.
2. This may be simply a departure by a member of staff and therefore no dismissal. The employee may, however, subsequently claim constructive dismissal (see page 47). In that case, it is possible that the words would signify dismissal in the legal sense since the words are ambiguous. Presumably, the employer assumed the person was leaving by resigning.
3. On its own, this phrase could mean anything from: 'Leave the office now, can't you see I'm busy', to: 'Leave the company's employment immediately'. Only the circumstances in which the words were spoken can determine whether or not there has been a dismissal.
4. This looks like a forced resignation. If it is, then that is a dismissal.
5. This is not a dismissal because there has been no threat of actual dismissal.
6. A very important rule of law was established by the Divisional Court in 1967 in the case of Morton Sundour Fabrics *v* Shaw: there is no dismissal unless an employer specifies the date on which the employment will end or the date can be ascertained positively. In this case, therefore, there is no dismissal.

The first important practical lesson is to ensure that both you and the employee concerned recognise clearly when either of you seek to terminate the employment contract. If you are the one to sack, use words which are unambiguous. Follow this up with a confirmatory letter.

> Read carefully chapter 15 of *Employee Relations*, paying particular attention to legal requirements indicated by [L] against the paragraphs on: unfair dismissal, claiming unfair dismissal, constructive dismissal, wrongful dismissal and dismissing.

CLAIMING UNFAIR DISMISSAL

As you have just read in *Employee Relations*, to qualify to claim unfair dismissal, a person must be a full time employee. Unfortunately, there is no simple answer to the question: 'Who is an employee in the hotel and catering industry?' Here is an example of the way the law examines this problem.

Mr W was appointed as a bar steward 'on a self-employed basis', responsible for his own tax and national insurance. He took money from the till to pay himself and the bar staff and he hired and fired staff himself. The Employment Appeal Tribunal said: 'If you had asked Mr W while he was running the club bar, "Are you your own boss?" could he honestly have given any other answer than "No"? In our judgement, clearly not.'

In other words, people who are called "self-employed" and pay their own tax and national insurance contributions are, in some circumstances, actually employees. To decide it may help to ask the following:

- Does this person give every appearance of being an employee: could he or she refuse an order?
- Does this person appear to be in business on his or her own account?

You will have noticed while reading *Employee Relations* that the general rule is that staff must work for at least 16 hours per week in order to be able to claim unfair dismissal. This means that either they actually work 16 hours, or they work fewer hours but are contracted to work at least 16 hours. Where the hours vary from week to week, it is the 'normal' hours that count, not the average. One variation on this is that an employee with a minimum of five years' continuous service will qualify if he or she can show that he or she works a minimum of eight hours per week. On the other hand, the law also allows that where a person used to work at least 16 hours and then agreed to a contract change which allows at least eight hours of work, the first 26 weeks of the changed contract can count in working out the necessary two years' qualification for unfair dismissal rights.

A final point worth noting is that if there is anything that could be considered illegal, either in the contract itself or in its performance, then the employee will have no right to claim unfair dismissal. This type of exclusion arises where an employment contract is in some way 'tainted'. It has a special relevance to some parts of the hotel and catering industry where payment is made without reference to Inland Revenue requirements!

Mrs Jones had worked for several years in a pub on a regular basis of three days one week (20½ hours) and two days the next (12½ hours). When she was dismissed, her employer defended the claim of unfair dismissal on the grounds that her two-day weeks broke her continuity of employment and therefore she was not entitled to claim unfair dismissal. What do you think? Note your reasons below.

Continuity of employment only applies when 16 hours or more a week are worked regularly, and not if it is a turn-and-turn-about arrangement with the alternative week below 16 hours. Mrs Jones would not be allowed to aggregate or average her hours and therefore she would not be entitled to have her claim heard, unless her period of continuous employment exceeded five years. If this was the case, she would fulfil the minimum eight hours a week requirement.

CONSTRUCTIVE DISMISSAL

These are the most common cases to come before industrial tribunals.

The first ingredient of constructive dismissal is that there be a repudiatory breach by the employer. The breach of contract can be of either an *express term*, like agreed wages, or of an *implied term*, such as mutual trust. The second necessary ingredient is that the employee must react promptly. If he or she does not leave shortly after the conduct of which he or she complains, then it can be held that the employee has elected to affirm the contract in its changed form.

Tick those of the following which you think are likely to be cases for constructive dismissal. Against each one that you have ticked indicate with an E or an I whether it is an express term (E) or an implied term (I).

		✓	E or I
1.	*Unilateral reduction in basic rate of pay.*		
2.	*Unilateral alteration of the formula for calculating pay.*		
3.	*Change of contract and demotion.*		
4.	*Non-payment of outstanding overtime.*		
5.	*Insistence on employee working non-contractual hours.*		
6.	*Withdrawal of free transport facilities with consequential cost to the employee of £X per week and an extra hour's travelling time.*		
7.	*Reduction in bonus earnings amounting to £Y per week.*		
8.	*Saying to a long-serving member of staff: 'You can't do the bloody job anyway!'*		
9.	*Reporting a member of staff to the police for suspected dishonesty without discussion with the accused member of staff.*		
10.	*Abusing a member of staff in conversation with a third party.*		

1, 2, 3, 4, 5, 8, 9 and 10 are likely to give rise to claims of constructive dismissal. 1 to 5 look like clear cut breaches of express terms in most staff contracts. 8, 9 and 10 are more likely to be seen as breaches of implied terms of a contractual relationship with an employer. 6 and 7 would probably not amount to a fundamental breach of the contract by the employer, but each case depends on its own particular facts and circumstances.

Lord Denning, at the end of what is now recognised as one of the leading cases concerning constructive dismissal (Western Excavating (EEC) Limited *v* Sharp, 1978) said:

> 'If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all, or alternatively he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once.'

Three conditions need to be satisfied for an employee to claim constructive dismissal:

- the employer must have committed a serious breach of the employee's contract, for instance reducing wages/salary, withholding holiday pay, changing hours of work
- the employee must leave as a result of that breach of contract
- the employee must make the break soon after the breach of contract has occurred.

In recent years the courts have taken into account the duty of trust and good faith which should normally exist between employer and employees. An employee who had been humiliated in a degrading and insulting fashion by being severely reprimanded in front of other employees was held as being constructively dismissed (Hilton International Hotels *v* Protopapa, 1990, described by Roger Peters, legal correspondent to the HCIMA, writing in *Hospitality*, November 1990).

WHAT IS UNFAIRNESS?

The law recognises two types of unfairness when an employee is dismissed:

Substantive unfairness There is no valid reason for the dismissal.
Procedural unfairness Whether or not there was a valid reason, the way in which the employee was dismissed was unfair.

You will recall the list of 'potentially valid' reasons for dismissing an employee given at the start of chapter 15 in *Employee Relations*. Dismissals will be judged as fair only if:

- the employer can show the reason or principal reason for dismissal

and

- that the reason is 'potentially valid'

and

- the tribunal considers that the employer acted reasonably in treating the reason given as being sufficient for dismissal

and

- employee's length of service.

In addition the tribunal will consider the manner in which the dismissal took place. It is essential that procedures are followed and that the employer treats the employee in a fair and reasonable way. If not, however good a reason the employer may have, the dismissal may still be unfair.

It is recognised that there is a broad band of reasonableness. Lord Denning said (British Leyland *v* Swift, 1981): 'one employer might reasonably take one view and another quite reasonably take another view.' The factors considered important by a tribunal include:

- the size and administrative resources of the firm
- contractual rights and duties
- consistency of treatment
- employee's length of service and status.

For a number of years Mary worked for eight hours on a Monday and Tuesday and four hours on a Wednesday while Jane worked four hours a day for a five day week. One day their manager informed them that they would be required to change their working hours to four hours on a Thursday and eight hours on a Friday and Saturday because the pattern of trading had changed. Both women complained that this clashed with their personal circumstances and they both refused. They both left and claimed constructive and unfair dismissal.

Note below how you think an industrial tribunal would regard these claims.

Often in cases like this, the employer argues that the hours are those set out on weekly rotas and that any variations are similarly noted and exhibited. A tribunal however is more likely to assess the contractual arrangements by measuring what hours the women had actually worked. Even if there had been reference to variation this would not amount to a right to unilaterally vary the hours of work.

It is also probable that a tribunal would say that an employer's need to deploy staff to best advantage is neither of more or less importance than the personal and domestic circumstances of the part-time employees concerned. To sustain the employer's claim that part-time employees can be required to work 20 hours any time within the 40 hour week, the employer would have to show this clearly in the contract with the staff concerned.

So it is probable that a tribunal would rule there was a fundamental breach of contract by the employer and therefore a case of constructive dismissal. It would also be assessed as an unfair case on the grounds that it was unreasonable for an employer to require part-time staff to work hours for which they had not been contracted and which did not suit their private requirements. (Brechin Bros Ltd v Kenneavy & Strang, Employment Appeals Tribunal 1982.)

In his article in *Hospitality* (November 1990), Peter Rogers described two other cases in which the employer's action was considered unreasonable.

The first concerned a bank clerk whose contract of employment included a mobility clause, under which the bank could require the employee to move to any other branch of the bank in the UK (United Bank Ltd *v* Akhtar). The clerk was given less than a week's notice to move to Birmingham. His request for a three month's stay of execution (backed by some good reasons) was refused and the bank stopped his wages.

Pointing to the mobility clause, the bank refuted the clerk's claim that he had been constructively dismissed. The tribunal ruled that it was part of the duty of good faith that employees should be given reasonable notice of any transfer, and found in the clerk's favour.

The second example concerns the time period between the breach of contract and the employee's decision to leave (Reid *v* Camphill Engravers). The employee was being paid below the minimum wages under the Wages Order. His complaints were ignored, so after three years the employee left and claimed constructive dismissal. The industrial tribunal decided that three years was an unreasonable delay, and the employee appealed to the Employment Appeal Tribunal. EAT decided that each payment of wages in breach of the Wages Order was a fresh breach of contract, and the employee could rely on the most recent underpayments as grounds for claiming unfair dismissal.

CAPABILITY DISMISSALS

Any reason which relates to the capability or qualification of employees for performing work of the kind they were employed to do is potentially a fair reason for dismissal. Thus, capability refers to skill, aptitude, health or any other physical or mental quality.

Here are some examples which have been declared 'fair':

- the slow worker
- the worker who, though competent, lacks drive and adaptability for other duties
- the worker who cannot meet his or her manager's raised standards
- the new recruit whose performance does not match promise
- the inflexible and unadaptable worker
- the worker who cannot do the job because of poor eye sight.

Employers do not have to establish in detail the correctness of their belief in the employee's incompetence but only that they have reasonable grounds for it and have taken reasonable steps to verify their conclusions. The test of fairness is a test of the employer's reasonableness.

The Court of Appeal has two tests of a 'fair' capability dismissal:

- the employer honestly believes the employee to be incompetent or unsuitable for the job

and

- the grounds for that belief are reasonable.

Describe below what you consider an employer might be reasonably expected to show had been done before dismissing an employee on grounds of incapability to do the work he or she was employed to perform.

Not only will the tribunal be keen to find out what an employer has done when faced with a seemingly incapable employee, but it will also expect to discover what steps were taken from the outset to minimise the risk of poor performance and to create the conditions which allow employees to carry out their duties satisfactorily. Thus, proper training, supervision and encouragement are essential to the 'fairness' of such dismissals, especially for employees promised a new job with the firm. It may also be apt to see if the employer could have re-deployed the person to a more suitable job.

That apart, the three basic things which will be assessed in these cases are:

- whether there was a proper appraisal/investigation of the employee's weaknesses, and identification of the problems
- whether there had been any warnings of the consequences of failure to improve
- whether the person had been given a reasonable chance to improve.

DISMISSAL ON GROUNDS OF ILL-HEALTH

It is always a difficult decision whether or not to dismiss a sick employee. Here again a tribunal will look to see whether the employer's conduct towards the employee has been fair and reasonable.

Long-term illness

An attempt should be made to balance the employer's need to run a profitable and successful business against the employee's need for reasonable job security. The ACAS advisory handbook *Discipline at Work* offers some useful, practical guidance to an employer faced with this problem.

You should consider:

- the terms of the employee's contract
- the employee's age and length of service
- the type of illness and the prospects of recovery
- whether the employee holds a key position
- the interests of the business.

It is most important to consult the sick employee and discuss the matter with him or her. Keep in touch and take whatever steps are necessary to discover the medical problem.

Short-term illness

An employee who is persistently absent for short periods can cause a problem to an employer. Good employment practice should ensure that steps are taken to find out the nature of the illness and to warn the employee that he or she may be putting his or her job at risk.

Philip, the manager of your outside catering operation, has been away from work with a heart condition since February. It is now October and your busiest time of the year. Regretfully you decided to dismiss Philip and appoint a new manager.

State below how you would argue that Philip's dismissal was not unfair.

Provided you have acted fairly towards Philip by keeping in touch with him, trying to discover the true nature of his condition and whether he is likely to make a full recovery, it is probable that the urgent needs of your business and the difficulty of obtaining temporary staff at that time of the year would mean that any dismissal would not be considered unfair.

'Aids should be treated like any other medical condition', wrote Greville Janner in *Caterer and Hotelkeeper*, 5 October 1989. It would not be reasonable or fair to dismiss an HIV carrier, where it has no effect on the person's work, or those he or she comes into contact with. If Aids develops and performance is affected, then the disease should be treated as any other. Before dismissing, employers should be very careful to establish all the facts, discuss the matter with the employee concerned, do their best to help, and give the right of appeal to a higher level of authority. Janner adds that a dimension which restaurateurs, hoteliers and caterers might have to consider is the effect on business if words gets out that they are employing an Aids carrier or sufferer.

DISMISSING FOR MISCONDUCT

Without doubt, most cases of unfair dismissal are ones in which it is alleged that an employee has been guilty of gross misconduct. There is no strict legal definition of misconduct but case law (that is tribunal decisions) show that misconduct need not be 'gross' but 'substantial' in relation to the employee, the job and the surrounding circumstances.

Again, it is for the employer to show that the misconduct was the reason for the dismissal and there was a genuine belief on reasonable grounds after reasonable investigation that the employee's misbehaviour justified dismissal. This means that employers do not need to have conclusive direct proof — only a strong suspicion, reasonably tested.

It is now well established that, to be found fair, a dismissal for misconduct must have been preceded by:

- appropriate warnings
- a thorough investigation of the offence
- informing the person of the complaint
- giving the person the opportunity to state his or her case
- allowing the person to be represented at the final in-house hearing.

If you have not done so already, read the whole of chapter 15 of *Employee Relations*, paying particular attention to the paragraph on avoiding problems, and Appendix IV.

In situations where it proves impossible to establish which employee was guilty of gross misconduct, employers may decide that there is no alternative but to dismiss each of the employees who was likely to have been responsible. Greville Janner, writing in *Caterer and Hotelkeeper*, 13 September 1990, described a case in which the branch manager of an off-licence was fairly dismissed, even though he may well have been completely innocent (and was certainly not proved guilty) of the crime (Parr *v* Whitbread plc, trading as Thresher's Wine Merchants).

One night someone de-activated the alarm system, opened the shop's safe and removed the entire contents. After carrying out a full investigation, the company sacked the four people most likely to be guilty. In upholding the tribunal's decision that the dismissal was fair, the Employment Appeal Tribunal laid down guidance for cases of 'blanket dismissals':

- the incident must be sufficiently serious to warrant dismissal
- a full and proper inquiry must be conducted (it cannot simply be left to the police, nor should the police be present at the employer's interviews with suspect employees)
- it must be clearly established that the offence could have been committed by any member of the dismissed group, and that the employer could not 'reasonably identify the individual perpetrator'.

REDUNDANCY

Redundancy is a form of dismissal. In brief, the law defines redundancy as a situation where:

- an employer has ceased (or will cease) to carry on a business for the purpose of which, or in the place where, an employee was employed

or

- a diminished workload has reduced (or will reduce) the need for employees carrying on particular work in their workplace.

An employee's redundancy dismissal must be wholly or mainly attributable to one of the 'redundancy situations' above.

Employees are entitled to compensation through the Redundancy Payments Scheme (RPS), provided they fulfil certain service and age criteria.

The redundancy payment due is calculated on a formula of percentages of a week's pay for each year of continuous service (up to a maximum of 20 years) and the employee's age. Overtime does not count unless there is a contractual obligation for the employer to provide, and the employee to carry out, such overtime. The pay is calculated as the normal wage, excluding benefits in kind, but can include tips or service charge paid by customers provided they are collected by the employer and distributed among the staff. In the case of shift workers whose remuneration varies week by week, the week's pay that counts is the average number of hours worked in a week multiplied by the average hourly rate.

The calculations are quite complex, but the Department of Employment will give detailed guidance.

Read chapters 16 and 17 of *Employee Relations*.

REDUNDANCY PROCEDURES

Whenever an organisation decides it must reduce its staffing there is always upset, not least for those whose posts are declared redundant. In a world that is no stranger to recession, many managers feel that it is realistic and in the best interests of everyone to face that possibility with some form of contingency plan. That usually means having a redundancy procedure.

Bearing in mind that a redundancy procedure is best considered as a general contingency plan rather than a list of detailed arrangements, make a list below of the main points you would wish to see incorporated in any redundancy procedure that might be agreed for your workplace.

The points you are likely to wish to see covered in a redundancy procedure will include:

- an agreement to consult trade union/staff as soon as redundancies seem likely
- actions to be taken to avoid compulsory redundancy
- agreement on warning period to be given to staff affected by the selection criteria
- additional compensation
- an appeals procedure

The 'last in, first out' selection method for redundancy has the merit of cheapness (redundancy payments usually increase with length of service), but applying the criteria fairly (essential if a legal claim is to be avoided) may mean losing enthusiastic, talented employees who have just been recruited and trained.

Voluntary redundancy or early retirement avoid the risk of unfair dismissal claims, but may cost employers some of their most experienced employees.

Selection on merit – or choosing those least needed – allows the employer to keep the best workforce in the circumstances, but is likely to involve difficult decisions which employees and trade unions challenge in the courts.

You may have heard, or read in the trade press that the industry's image was being tarnished by poor treatment of staff who were being laid off, without any help for their future careers. List below some of the ways in which employers can help staff cope with redundancy.

In a report in *Caterer and Hotelkeeper*, 11 April, 1991, Dom Walsh quoted Gary Katzler, joint chief executive of the recruitment consultants Berkeley Scott:

'You can't sit here and expect companies not to make cuts, but it's how they do it that is the problem. Wielding the axe is perhaps necessary but there are ways of doing it.

'There are a lot of disgruntled people who, if they had been handled properly in an exit interview, might have been willing to return to the same company when the economic situation improves.

'We are shooting ourselves in the foot: we believe we will lose so many people from the industry that we will be faced with an additional nightmare on top of the demographic problem.

'Redundancy is an unpleasant situation for all concerned, but demonstrating basic human kindness and concern, and providing some level of advice and assistance can do much to soften the blow.'

Here are Berkeley Scott's suggestions on helping staff cope with redundancy:

- Take the trouble to explain in some detail why redundancy is considered necessary, and that the decision does not reflect individual's personal ability or performance.
- Give as much warning as possible.
- After the initial discussion, offer the opportunity for a further discussion of a constructive nature, once the individual has had a little time to try to come to terms with the news.
- Some people will be totally unprepared for finding a new job, especially if they have worked for the same organisation for many years. Therefore some basic tips on the job hunting process will be appreciated such as: a hand-out on how to prepare a CV, a list of Jobcentres, recruitment consultants, and trade publications, local and national newspapers which carry classified job advertisements, coaching in how to present and conduct yourself in an employment interview.
- Arrange with a recruitment organisation to provide further counselling – some companies will do this at no extra cost.

The next section deals with the different types of unfair discrimination and equal opportunities.

SECTION 5
Non-discrimination and equal opportunities

After completing this section you will be able to:

- state the different types of unfair discrimination
- state the rights of individuals to join or take part in a trade union (or not to join or take part in a trade union)
- identify barriers to equality of opportunity
- take positive action towards an equal opportunities policy and procedure in your workplace.

BEST COPY AVAILABLE

KINDS OF DISCRIMINATION

By now, you should be aware of the value to a manager of operating fair, even-handed procedures. The Race Relations Act, 1976; the Sex Discrimination Act, 1975, amended by the Sex Discrimination Act, 1986; the Equal Pay Act, 1970 and the Equal Pay (Amendment Regulations), 1983 make the principles of equal treatment a legal obligation in employment.

By and large, employers can appoint who they want on their own criteria without interference from the law. But it is illegal to discriminate against anyone on the grounds of their sex, marital status, skin colour or race — regardless of your motives for doing so. Of course, recruitment and selection by definition is discriminatory — you choose A in preference to B, presumably because you think A will do a better job. It is *unfair discrimination* which is illegal.

Unfair discrimination can be direct or indirect. An example of direct discrimination would be where a company advertised for bar staff and specified that blacks and/or women should not apply. Indirect discrimination would occur if, for example, you questioned a female job interviewee about her plans to start a family. You should avoid any practices which indicate an intention to discriminate unfairly. For example, beware of laying down conditions which are not justified by the job, which considerably fewer women than men would fulfil — 'candidate must be at least 1.80m tall'.

Employees who feel that they are, or have been, the subject of unfair discrimination or inequality can take their case to an industrial tribunal.

In late 1990, Age Concern England and related organisations, including the Institute of Personnel Management and the Centre for Policy for Ageing, joined forces to form the *Alliance Against Ageism*, a campaign to ban ageism in recruitment and employment. (*Caterer and Hotelkeeper*, 6 December 1990, Fiona Bacon.)

The Alliance points out that older applicants can offer more continuity than someone younger, and their experience and maturity will more than compensate for the ambitious drive employers look for in younger applicants.

SEX DISCRIMINATION

In brief, the law forbids discrimination on grounds of sex or marital status, whether done directly or indirectly, before or after appointment. It is therefore illegal to discriminate in the way you provide opportunities for promotion, transfer and training, or by not offering equal access to benefits, facilities or services that go with the job, or by subjecting women at work to detrimental treatment.

Here are a few examples of actions that fell foul of the law:

- opportunities for promotion for higher posts were advertised in a magazine read mostly by men (Woodcock *v* Boots the Chemist, 1976)
- failing to offer a woman a supervisory post because she was married and had three young children at home (Braine-Hartnell *v* Merton, 1978)
- free travel facilities for men's spouses but not for women's spouses (Simpson *v* National Carriers Ltd, 1977)
- dismissing a woman employee after she had passed her 60th birthday as part of a policy of retiring men at the age of 65 and women at the age of 60. It is now unlawful to set different retirement ages for men and women in comparable positions (Marshall *v* Southampton and South West Area Health Authority, 1986).

There are exceptions to this law. For instance, where being a man or woman in itself is a genuine qualification for the job. This applies to posts like lavatory attendant, and to the kind of place where it is impracticable for staff to live anywhere else and the only accommodation available is one sex only and it would be unreasonable to expect the employer to provide such separation.

Here are the guidelines given by the Employment Appeal Tribunal to test a claim by an employer that discrimination is justifiable.

1. The reason for the discriminatory requirement or condition must be genuinely necessary.
2. All the circumstances, including the discriminatory effect of the requirement or condition if allowed to continue, must be weighed up.
3. The need for the requirement or condition must be weighed against its discriminatory effect.
4. Convenience to the employer is of no avail; there must have been an attempt to find another, non-discriminatory way of achieving the same end.

> Seemingly innocent requirements can turn out to be indirectly discriminatory. A man whose job application was turned down because he was receiving an occupational pension succeeded in his complaint of indirect discrimination. In an attempt to promote the employment of genuinely unemployed people, the employer's policy was not to appoint anyone who was receiving a pension. The rejected applicant was able to prove that of those looking for work who were in receipt of a pension, there more men than women, and thus the policy was discriminatory. (Greater Manchester Police Authority *v* Lea, 1990.)

RACIAL DISCRIMINATION

Simply put, the law forbids discrimination on racial grounds. These grounds cover colour, race, nationality or ethnic origin. You will notice that it does not cover religion, except in Northern Ireland but it has now been decided that Jews and Sikhs are such by ethnic origin and therefore are protected from discrimination on those grounds.

Here are some examples of racial discrimination which broke the law:

- a white woman was refused a job because her husband was West Indian (Wilson *v* Steelwork Co, 1978)
- a firm advertised for staff but excluded all applicants with a certain postal district address (where 50% of the inhabitants were coloured) (Hussein *v* Saints Complete House Furnishings, 1979)
- a company which operated a 'no beards' rule (Singh *v* Rowntree Mackintosh, 1978)
- a black person was offered a job, but the offer was withdrawn after a group of white employees objected (CRE *v* Westminster City Council, 1986).

As with the sex discrimination rules, there are exceptions which give an employer a good case to argue against any claim. The most interesting one for the hotel and catering industry is where the job involves working in a place where food or drink is provided for the public and is in a particular setting for which a person of a particular racial group is required for reasons of authenticity; hence Chinese serving staff in a Chinese restaurant.

> The Commission for Racial Equality report *Working in Hotels*, published in 1991, presented the findings of a general investigation carried out by the Commission between 1987 and 1989 into recruitment and selection in the hotel industry, with particular emphasis on managerial, supervisory and skilled jobs. The investigation showed that 'the hotel industry has taken few initiatives towards equality of opportunity; suitably qualified ethnic minority applicants do not apply for careers in hotel management, and nor are there many ethnic minority students on the relevant college courses....Despite recruitment and retention problems, a major industry can ignore good equal opportunity practice, thereby maintaining established patterns of inequality....The hotel industry has a reputation for giving a low priority to personnel issues, but the almost universal disregard of the Code's* recommendations which we found cannot be justified, either on the grounds of inadequate personnel resources or the inappropriateness of the Code for use in the industry.' (**Race Relations Code of Practice: For the elimination of racial discrimination in employment and the promotion of equality of opportunity*, CRE, 1984.)

List below some practical steps that could be taken in your workplace to encourage racial equality of opportunity. Your suggestions could take the form of DO'S and DONT'S.

Action points for personnel and general managers recommended by The Commission for Racial Equality in its report *Working in Hotels* included the following:

DO

- find out about the ethnic minority populations in your area
- build links with local schools, ethnic minority groups and the local Racial Equality Council
- consider placing job advertisements in the ethnic minority press
- make sure that colleges, Jobcentres and careers service know that you are actively encouraging ethnic minority people to apply for jobs
- review job descriptions and personnel specifications regularly to see that they do not include criteria that are not job related
- monitor the ethnic origins of applicants at each stage of the recruitment process, and analyse the data regularly to check that there are no barriers, and to measure performance
- if there are no ethnic minority applicants for jobs or promotion, ask why, and take action to deal with the problem.

DON'T

- use informal methods of recruitment, for example by word of mouth, if your workforce is predominantly from one racial or ethnic group
- make judgements about applicants or candidates for promotion which are not based on the job requirements.

Other recommendations made in the CRE report include:

- job advertisements should include a positive action message along the following lines: *People from ethnic minorities are underrepresented in supervisory and management positions, and are therefore particularly encouraged to apply. Section 38(1)(b) of the Race Relations Act applies*
- do not let a single member of staff have sole responsibility for hiring staff – decisions should be taken by two people at least, or be checked to avoid any possibility of racial bias
- wherever possible, the subject of equal opportunities should be incorporated into existing training courses on staff recruitment and selection, for example identifying barriers to equality of opportunity by examining recruitment methods, job descriptions and personnel specifications, equal opportunity interviewing, and being aware of the possibility of cultural bias and racial stereotyping
- including modules on cultural awareness in customer contact training – understanding the needs of the various local ethnic communities, will mean that services can be adapted to meet these needs, so making good business sense.

EQUAL PAY

In brief, this law establishes the right of men and women to equal treatment as regards terms and conditions of employment, provided they are employed on the same or broadly similar work or work of equal value. If the work is not the same, a women can still claim equality of pay with a man if the demands made on her are the same as that on a man in the same employment. These demands can be in terms of effort, skill or decisions made. Where part-time workers, who are mainly female, are doing the same work as full-time employees, they should receive the same rate of pay (pro rata).

Consider each of the following advertisements. Does it comply with the legislation outlined? Give your answer with reasons below.

Waiter required. *No experience needed. Training will be given. Apply to ...*

Vacancy for a ***Front of House Supervisor.*** *Must hold National Certificate SCOTVEC. Apply to ...*

Both advertisements break the law.

It is not necessary to invent new job titles, such as 'waiting person' but it is necessary to show that the post is open to men and women. You could say: 'Waiter (male or female) required.' Or, better still: 'Serving staff required.'

You should avoid setting criteria where length of residence or experience in the UK or countries within the UK is required. If a particular qualification is needed, you must make it clear that comparable qualifications would be equally acceptable.

DISCRIMINATION AGAINST EX-OFFENDERS

If an offender against the law is not convicted again during a specified rehabilitation period, his or her conviction becomes spent. The length of rehabilitation varies from six months to ten years. Prison sentences of more than two and a half years never become spent.

It is against the law to discriminate against an ex-offender because she or he has a spent conviction. For instance, an ex-offender cannot be dismissed for failing to disclose a spent conviction.

WORKING TOWARDS EQUALITY

It would be naive to believe that because of the legislation outlawing unfair discrimination, every company now provides equal opportunities for all. Unfortunately, there are still many firms, especially in the hotel and catering industry, who do not seem to realise the value to the business of utilising the talents and resources of people irrespective of their sex or race. Equal opportunities are a legal requirement. But they also make good business sense; they are an essential part of good management.

Under the headings on this and the next page, note some ways in which you can contribute to an equal opportunities policy in your workplace.

RECRUITMENT AND SELECTION OF STAFF

WORKING CONDITIONS

TRAINING

OPPORTUNITIES FOR PROMOTION

COMMUNICATIONS

Check your points with the last section of chapter 7 of *Employee Relations* (equal pay and sex discrimination) and chapter 9 (racial discrimination).

Both the Equal Opportunities Commission and the Commission for Racial Equality publish a wide range of informative booklets and guides and will offer advice – addresses and telephone numbers in Appendix II of *Employee Relations*.

RIGHTS OF TRADE UNION MEMBERSHIP AND NON-MEMBERSHIP

Under the Employment Acts 1982 and 1988 an employer may not dismiss, or take action short of dismissal (such as discrimination or victimisation), against an employee with the intention of :

- preventing, deterring or penalising the employee for belonging to or intending to join an independent trade union
- preventing or deterring the employee from taking part in the activities of such a union at any appropriate time, or penalising him or her for doing so
- compelling the employee to remain or become a member of any union
- requiring the employee to pay some other body, usually a charity, as an alternative to belonging to a trade union

irrespective of the hours the employee works or the length of his or her service.

To win a case claiming action 'short of dismissal' an employee would have to show that:

- there was some 'action' against him or her to prevent or compel union membership — this covers a multitude of sins under the heading of victimisation or discrimination
- the action took place
- the action was against the employee as an individual rather than against the union as a whole
- the action was to deter or discourage union membership or activity.

It is now unlawful to refuse to employ a person because he or she is, or is not, a member of a trade union.

List below some actions which an employer might take which could be illegal by being 'actions short of dismissal'. It may help to recall any stories you have been told or read about in which employees were victimised or discriminated against by their employer. Use your imagination too!

Here is a selection of actions that have been found by industrial tribunals to be 'actions short of dismissal':

- A decision not to promote an employee.
- The demotion of a manager to an assistant manager's post.
- Transferring a shop steward so that he had less contact with employees.
- Transferring an employee to a less satisfying job and where there were less tips.
- Not completing an employee's annual appraisal form.
- Preparing an adverse report to be sent to a promotions board.
- Refusal of a car-parking facility to an unrecognised union member.
- Threat of disciplinary action.
- Upgrading others but not the complainant.
- Threatening to close down the business rather than recognise the union.

The next section deals with time off and maternity rights.

SECTION 6
Time-off and maternity rights

After completing this section you will be able to:

- state when an employee is entitled to time off work, and in what circumstances this is paid
- state the main maternity rights of female employees.

BEST COPY AVAILABLE

RIGHTS TO PAID AND UNPAID TIME-OFF

The law specifically allows staff to take time off from work in certain circumstances, sometimes with pay and at other times without pay. To qualify for this right, employees must work for at least 16 hours a week, or for eight hours or more a week if they have five years' service:

Trade union duties Officials of recognised trade unions are entitled to take time off with pay to carry out their duties and to undergo training for such duties. The amount of time allowed is to be 'reasonable'. (An ACAS code of practice gives guidance on what 'reasonable' means, see below.) In addition to these officials, a recognised trade union has a right to appoint safety representatives. These too have the right to carry out their safety duties and be trained in them.

Trade union activities All members of a recognised independent trade union have the right to take time off, but without pay, to take part in trade union activities. (The ACAS code of practice provides guidance.)

Public duties All staff who are engaged in public duties, such as JP, local authority councillor, member of a statutory tribunal or school or regional health authority governor, have a right to unpaid time off to attend to their duties.

Looking for work or re-training A member of staff who has a minimum of two years' service and who has been given notice of redundancy, is entitled to take reasonable time off in order to look for another job or to arrange training. In this case, since the maximum award a tribunal can make if you fail to allow this right to redundant staff is two-fifths of a week's pay, it seems as if your obligation to give paid time off is limited to two days.

Ante-natal care Women are allowed 'reasonable' time off with pay. This is regardless of their hours worked.

> Read the section on time off work in chapter 7 of *Employee Relations*.
>
> Obtain a copy of the ACAS code of practice *Time off for Trade Union Duties and Activities* (available from Her Majesty's Stationery Office).

Imagine you are the manager of an operation where an independent trade union is recognised. Briefly note below what you would do in each of the following situations.

1. *Jack is branch secretary of his union. He asks you for paid time off to attend a meeting of branch officials where a union organiser is going to explain the financial administration of the branch.*

2. *Tom, the shop steward who negotiates with you on only minor matters (he is really the liaison man between the staff and the full-time officer who usually negotiates with you), asks you for two weeks' paid time off to attend a shop steward's course. You offer him one week paid and the other unpaid. He claims a right to pay for both weeks.*

3. *Mary, a union member, tells you that the union is holding an official party to say farewell to a retiring trade union official. She asks to take unpaid time off to attend.*

4. *For some time you have allowed Joan time off on Thursday mornings to carry out her duties as a JP. You had arranged the work and rotas accordingly. Joan now asks you if she can change this arrangement to a Tuesday because that is a more interesting day in the courts.*

5. *You have given notice of redundancy to Bill. He requests time off to look for other work and to attend an interview with another firm. You ask for proof of this appointment but he refuses to give it.*

RIGHTS AND RESPONSIBILITIES

1. Since this meeting cannot be construed as one which affects the industrial relations in your company, you would be entitled to refuse this request for paid time-off.
2. Since such a course is likely to be very relevant to Tom's role he would be entitled to take both weeks on full pay.
3. Again, Mary is within her rights to expect unpaid time off for this function since it is an official union one, albeit of a social nature. The 'activities' involved in this right are to be widely interpreted.
4. A lot would depend on what Joan's request involved in terms of re-arranging work schedules. If it would cause undue disturbance, you would be entitled to refuse this request by Joan.
5. The ACAS code of practice certainly advises those who seek time off to make arrangements with the employer as early as feasible. But you have no right to demand proof that the request is a genuine one. After all, if you find that it is not, then it is within your rights to take appropriate disciplinary measures.

MATERNITY RIGHTS

A female employee has four main maternity rights:

a) not to be dismissed because she is pregnant or for any reason connected with it
b) to take time off for ante-natal care
c) to maternity pay
d) to return to work after confinement

For a) and b) there is no qualifying period. For c) and d) the employee must have worked minimum periods to qualify.

Read chapter 8 of Employee Relations, *paying attention to the legal points outlined and the practical implications for managers. Then answer each of the following questions in the space below.*

1. *Pam was on holiday during the three weeks before the eleventh week prior to her confinement. Is she entitled to maternity pay?*

2. *At the beginning of the eleventh week, Sally had been working for you for 103 weeks. She continued working for you throughout the following week and then went on maternity leave. Should you pay her the maternity payment?*

3. *Trudi was one week short of two years' employment at the eleventh week before confinement, but the actual date of her confinement turned out to be a week later than predicted. Is she entitled to maternity pay?*

4. *Because Mary's baby was born 11 weeks prematurely she did not give you the 21 days' notice required. Is she entitled to the maternity payment?*

1. The important point here is that Pam should be in your employment at the eleventh week; being on holiday does not break the employment. Therefore she is entitled to maternity pay.
2. It is a strict requirement that a woman must have been continuously employed for two years at the eleventh week before her confinement. In this case, therefore, Sally would not be able legally to claim a maternity payment. If you did pay her, the Department of Employment would refuse to refund the money to you.
3. In this case, since dates of confinement can vary, Trudy would qualify for payment.
4. The rule about giving the employer three weeks' notice is also a strict one, but as in this case, if it is not reasonably practicable to have given that notice, then payment should be made.

Take a break before beginning Section 8 which deals with health, safety and hygiene and the procedures for protecting the well-being of people and property in your workplace.

A particularly useful booklet is the *Employer's Guide to Statutory Maternity Pay*, DSS Leaflets, P.O. Box 21, Stanmore, Middlesex HA7 1AY.

The European Parliament's committee on women's rights has approved a draft directive giving pregnant women 14 weeks off on full-pay (British women are at present titled to 90% of earnings for six weeks, followed by a flat rate payment of £39.25 a week for a further 12 weeks), and two weeks compulsory leave immediately before the expected date of birth (*Caterer and Hotelkeeper*, 27 December 1990).

SECTION 7
Protecting people in the workplace

After completing this section you will be able to:

apply health, safety, and hygiene legislation to your workplace

spot health, safety, hygiene and fire hazards in your workplace

devise procedures to protect the well-being of people and property in your workplace.

People who reach a management or supervisory position in the hotel and catering industry should be aware of the on-going need for safe working practices and high standards of hygiene.

Do you need to refresh your memory? You are recommended to read all of the HCTC Mastercraft book, *Health, Hygiene and Safety in the Hotel and Catering Industry*. (Individual references are given where appropriate.) Other useful publications available from the HCTC include *Germ Warfare Operations Manual*, and the two *Foodcraft* books.

HEALTH AND SAFETY

The Health and Safety at Work Act, 1974, makes everyone at work responsible for the health and safety of those around them. But the main burden of responsibility falls on employers and their representatives — you!

Read units 12 to 15 of Health, Hygiene and Safety in the Hotel and Catering Industry, *paying particular attention to the duties of employers. Make a list below of the things for which you have a responsibility, including working conditions, equipment and procedures.*

You will recall that employers have a duty to look after the health, safety and welfare of their employees and of anyone else affected by their work, in so far as it is reasonably practicable. Your primary task is, of course, to ensure safety. But if your operation were to face prosecution for a breach of legislation, you might have to show the court that the precautions taken were 'reasonably practicable'.

Consider each of the following situations. Note below whether a court would consider each improvement 'reasonably practicable' and give the reasons for your decision.

1. *Problem: rubbish piling up inside premises. Need for a skip or container at the rear of the premises.*
   Company defence: cost of buying a container and possible complaints from neighbours about an unsightly skip.

2. *Problem: temperature in workplace lower than is reasonable.*
   Company defence: increased energy cost could lead to lay-offs.

3. *Problem: damage to floor covering.*
   Company defence: high cost of replacing floor covering relative to low risk.

It must be said that in an exercise like this there can be no right or wrong answers as not all the circumstances have been described. Nevertheless, the exercise may help you to understand how the courts weigh up risk factors.

1. The court would probably say that the risk to health outweighs the cost. Some container should be provided, whatever the cost. Neighbours' complaints that the skip is not aesthetic would be considered irrelevant.
2. The employer's financial situation is probably irrelevant.
3. The risk to staff might reasonably be met by replacing parts of the floor covering rather than the whole.

However, fulfilling the legal requirements is not the only reason why you should maintain high safety standards in your workplace. Good safety management has many other benefits.

In the space below, note some ways in which good safety management could benefit your company.

Here are some of the factors you may have thought of:

- fewer accidents
- less ill health
- compliance with the law
- better working conditions
- better employee relationships
- lower absenteeism
- increased efficiency
- good public image
- profitability

Protecting people in your workplace makes good management sense. There are not only the legal penalties to be considered. Accidents are costly to employers in terms of lost working time and increased insurance premiums. But perhaps the biggest loss is in staff loyalty.

Staff will be more likely to leave if they feel that their safety is of less importance to the company than time or money. Recruiting replacements and training them to the required standard can be an expensive and time-consuming business.

THE HUMAN FACTOR

Working practices and procedures may appear to be satisfactory as long as nothing unforeseen happens. You have provided your staff with training and equipment. They know how to do their jobs and understand how to operate the relevant machinery. Surely that is enough?

But staff are not robots; they are human beings, and many accidents are the result of people making mistakes or acting in an unpredictable way.

The Accident Prevention Advisory Unit of the Health and Safety Executive has made a special study of the part played by 'human factors' in accidents. Among the human factors identified were:

- lapses of attention
- mistaken actions
- mis-perceptions
- mistaken priorities
- wilfulness.

> You will find it useful at this stage to view the *Mastercraft* video *The Human Factor*.

Consider for a few moments some of the unfortunate incidents in hotel and catering establishments you have come across or heard about — accidents, food poisoning outbreaks, fires and so forth — and note below what human failings might have led to the incident.

Although the Accident Prevention Advisory Unit addressed the problem of accidents, their observations about human factors would apply equally well to other hazards, such as fires and food poisoning outbreaks.

Lapses of attention An employee may be distracted or allow his or her attention to lapse. Hotel and catering establishments are busy places, and a person may be trying to deal with several jobs at once. If colleagues are clamouring for attention or demanding help, it is easy to see how attention could lapse, resulting in an accident.

Take the case of a chef who is slicing vegetables while he is trying to tell a trainee how to prepare a new dish. It is easy to see how his divided attention could result in an accident.

Mistaken actions Sometimes people don't realise that what they are doing is dangerous. Take, for example, some trainees who think it will be a great prank to throw a fellow trainee into a vat of water. What they do not realise is that the water is extremely hot, and the unfortunate trainee is badly scalded as a result of their horseplay.

Mis-perceptions Humans can only interpret situations in the light of the information that is available. Sometimes 'tunnel vision' or preconceived notions may lead us to wrong conclusions. Here is a real-life example of a mis-perception.

In a nursing home for the elderly, one of the residents became upset. She went to bed, and later got up and went out the front door. When the fire alarm went off, the night nurse, who was expecting the resident, thought it was the door bell and went to the front door. As there was no one there, she entered the sitting room to find out what was causing the ringing and tried to switch the bell off. Valuable time was lost before the fire brigade was called and the building evacuated. Three elderly women died.

On one level, what the night nurse did may seem ludicrous. Of course, she should have recognised it was the fire alarm and called the fire brigade immediately. Yet on another level, her actions are understandable. She was expecting the resident to come back, so when a bell rang she assumed it was the door bell. It was a human error.

Mistaken priorities Staff may feel that there is a conflict between safety and other objectives, such as a need to get on with the job or to save time or money.

Take, for example, a chef who is supposed to defrost a chicken for a special dish which is on the menu. He forgets, and anxious not to let the restaurant down or get into trouble with the manager, he quickly defrosts the chicken in hot water. Unfortunately, the chicken was already infected with salmonella, and as the bird is not properly thawed, the temperature in the body cavity is not high enough to kill off the bacteria.

Wilfulness It is difficult to tell whether a person is motivated by mistaken priorities or sheer wilfulness. Human beings do not always act from the best of motives. Everyone is lazy at times, so it is tempting to take a short-cut, if you think you will get away with it, or if you disagree with a particular safety rule.

Someone draining fat when it is hot, instead of waiting for it to cool, may do so to save time, but on the other hand, if there is no rush, this may simply be a wilful breach of safety practices.

Look through the last five accidents in your company's accident book. In each case, ask yourself which human factors, if any were involved. Note your findings below.

If the accident book does not contain enough information, ask the employees to describe to you in detail what happened.

A TOTAL APPROACH TO SAFETY

The Accident Prevention Advisory Unit maintains that 70% to 90% of all human factor accidents are preventable. Recognising that there is a limit to what an individual employee can do if equipment and conditions are inadequate, it urges management to formulate a total approach which will include equipment, conditions, the pace of work, good training and adequate supervision.

It sees management's role as twofold:

1. To create a climate in which all staff will consider health and safety to be of fundamental importance.
2. To make sure that all company policies and systems take human fallibilities into account.

The part which human factors play in accidents is examined fully in *Human Factors in Industrial Safety* (Health and Safety Executive) and *Managing Safety. A review of the role of management in occupational health and safety by the Accident Prevention Advisory Unit of HM Factory Inspectorate* (HSE Occasional Papers series, HMSO).

Although these publications are not specifically concerned with the hotel and catering industry, they contain many useful insights.

A CLIMATE OF SAFETY

Each establishment has its own particular climate with regard to health and safety. It may be one in which health and safety are valued and given a high priority. Or it can be a 'macho' climate in which risk-taking is condoned or even encouraged.

The attitude of management is critical in determining what type of climate prevails. When an individual chooses whether to risk his or her safety, that person will consider how big a risk is being taken. And the employee will weigh that against another risk — the reaction of the supervisor or manager. The employee may fear being branded as 'awkward' or even losing his or her job if he or she gets behind with the work or refuses to carry out a task.

Most people just want to get on with the job. They don't want to appear over-cautious especially if the danger isn't obvious. It is difficult for staff to keep safe if colleagues and superiors do not take safety seriously.

One risk, one short-cut taken may seem insignificant. The first time people may get away with it. But if staff continue to take risks, the safety structure of the company will gradually disintegrate and a climate will evolve where risk-taking is the norm. Eventually, there will be accidents.

The same human factors lead to minor accidents and major disasters like Chenobyl. The outcome appears to be a matter of luck. But what is certain is that risk-taking increases the likelihood of an accident. That's why it's vital to maintain a safety-conscious working climate.

Management must set excellent safety standards for the company and make sure that these are adhered to at all times. In all day-to-day operations, it should be clear that management is fully committed to safety.

If you are to foster a climate of safety in your workplace, this will have implications for the way in which the company is to be run. In the space below, list some actions which you may have to consider.

You may have thought of the following:

- stating clearly the company's expectations and standards with regard to safety (a sample health and safety policy is reproduced on the next four pages)
- making appropriate resources available to enable work to be carried out in safe conditions, with adequate equipment and at an appropriate pace
- redesigning the workplace to overcome potential problems which might be caused by a poor physical environment
- designing work schedules and working methods to allow for safe working
- identifying hazards by listening to staff
- improving training
- making sure staff are supervised adequately

Worksafe Hotel Limited

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May 3, 19XX

HEALTH AND SAFETY POLICY

General Statement

The Worksafe Hotel Limited accepts the aims and provisions of the Health and Safety at Work Act, 1974 and regulations made under the Act.

It recognises that one of its foremost duties and responsibilities to its employees is to provide and maintain healthy, safe and hygienic working conditions and practices. It also recognises its duties and responsibilities to guests, contractors and people other than employees who are affected by the company's activities.

The company considers that management and employees should share this responsibility.

The company considers that all employees and management have individual responsibilities to ensure that all company safety rules and practices are observed and that employees are obliged to co-operate with management in maintaining high standards of health and safety.

Company Health and Safety Organisation

The company's Managing Director, Mr J Blogg, has ultimate responsibility for the implementation of the company's health and safety policy.

The Resident Director, Mrs E Edwards, has responsibility for ensuring that all managerial staff are made aware of the company's health and safety policy, for keeping the policy under regular review and for ensuring that any problems which arise are resolved.

The Deputy Manager, Mr L Ramsey, has responsibility for the effectiveness of health and safety training. Fire and Safety Officers have been appointed to assist in this task. They are Miss S Finch and Mr G Lloyd.

The managers and directors named above are also responsible for ensuring that all staff are advised of the Health and Safety Policy and of any amendments and that adequate records are maintained of all accidents and health hazards.

.../...

The heads of all sections are responsible for implementing the company's Health and Safety Policy within their own departments.

Personal Liability of Employees

It is the duty of every individual employee to take every reasonable care for the health and safety of himself or herself and other persons who may be affected by his or her acts or omissions at work. It is also the duty of all employees to co-operate with their employer in achieving compliance with the Health and Safety at Work Act, 1974.

HEALTH AND SAFETY ARRANGEMENTS

Accident Prevention

It is the special responsibility of members of the management team to spot potential hazards and to take remedial action. It is their responsibility to ensure that all staff are briefed and trained in necessary safety measures and precautions. It is their responsibility to take remedial action on any hazard reported to them.

It is the responsibility of all staff to be vigilant and to protect their own and colleagues' health and safety. It is the duty of all staff to report potential or actual hazards to their appropriate section head.

Training

Each section head is responsible for identifying the training needs of his or her staff and for ensuring that the necessary health and safety training provided is understood by all his or her staff.

Accident Investigation

Any member of staff who has an accident must make sure that it is recorded in the 'Accident Book' which will be reviewed weekly by management. Any hazards causing or contributing to the accident will be dealt with and a record made in the 'Accident Book' of the action taken. All staff will be trained in the correct method of lifting and handling heavy goods as part of their job training.

Use of Dangerous Machinery

Each section head must ensure that untrained employees are not allowed to operate machinery prescribed as dangerous and that no person under the age of 18 should be allowed to operate or clean such machinery without adequate training and supervision. Prescribed dangerous machinery on the premises includes the meat slicer.

.../...

First Aid Arrangements

First aid materials are provided in the kitchen, the cleaning materials stores and at reception. Trained and qualified First Aiders will be available at all operating hours. The company has appointed qualified First Aiders with special responsibility for the kitchen which the company considers to be a high risk area. The First Aiders are:

Kitchen — Miss P Roberts, Mr R Moore, Mr S Low.

Other departments — Mr P Potter, Mrs Q Roach, Ms C Green, Mr B Davenport.

Hazards

The company has identified the kitchen, the cleaning materials store and the goods lift as high risk areas and staff should take special care when working in these areas. Particular attention should be paid to the use and maintenance of kitchen equipment and to the use and storage of cleaning materials. Staff should never attempt to repair or service the goods lift.

Fire and Accident Prevention, Emergencies and Training

All staff will take part in fire training twice a year under the instruction of the Fire and Safety Training Officers. Training and drills will also be undertaken to cover other accidents and emergencies such as bomb scares.

Company Rules

The company considers the health and safety of its employees to be of paramount importance. Failure by any member of staff to observe correct and adequate health and safety practices will result in disciplinary action according to the disciplinary procedures set out in the Staff Handbook.

Consultation

The company undertakes to work with union-elected health and safety representatives to work together towards a healthy, safe working environment and safe practices.

Review of Policy

There will be regular meetings attended by the Fire and Safety Officers, union-elected health and safety representatives, the Deputy Manager, other appropriate personnel and management to review

.../...

the effectiveness of the policy. Any weaknesses and recommendations will be referred to the Resident Director for attention.

Scope of the Policy

The statement applies to any person working within the Worksafe Hotel Limited whether or not they are contractually employed by the company. It protects both people at work within the company and guests, members of the public and others affected by the company's activities.

Signed

Managing Director

Note below how each of these accidents could have been prevented by good management.

1. *Isabel, a new member of the housekeeping staff, has to clean some bathroom tiles which are too high for her to reach. She manages to reach them by standing on the edge of the bath, but falls and breaks her wrist. She explains that the only stepladder was being used by a colleague on the next floor, and she would not have had time to complete her work if she had gone to fetch it.*

2. *Damien, a kitchen assistant, is carrying a pan of hot water for the washing up, because the boiler has broken down. The water splashes, and he slips, scalding himself badly.*

3. *Mary is vacuuming in the restaurant between meal service, using a power point in the corridor, as she cannot find an available power point in the restaurant itself. A guest trips over the trailing flex and breaks an ankle.*

4. *George is cleaning an oven, when the caustic spray which he is using splashes, causing burns to his eyes.*

5. *An elderly hotel guest slips on some wall paper paste spilt by contract decorators.*

1. Employees need adequate equipment if they are to do their job without risking their safety. The company should have provided enough stepladders.

   Work schedules ought to allow staff to complete their work in the allotted time without having to take any unnecessary risks. Management may need to reorganise work or hire extra staff to enable staff to work safely.

   Managers must make it clear that the company puts safety first, even when it may appear to conflict with other objectives such as saving time or money. Further training, better supervision, and better communication between management and employees may be needed, as in this example.

2. If the boiler had not broken down, there would have been no shortage of hot water. Equipment must always be properly maintained and serviced. In this example, there is also a need for staff training and better supervision.

3. It would appear that there are not enough power points in the restaurant. Perhaps Mary could unplug a table lamp or another item which is not being used.

   Management should check whether existing power points are overloaded and train staff to be aware of power hazards such as trailing or frayed flexes, overloading, electrical humming and burning.

4. George should have been given goggles to protect his eyes from caustic chemicals. He should have been properly trained in the use of hazardous substances, and supervised.

5. The management of the contract decorators and the hotel should have co-operated to keep guests and staff safe. The hotel manager could have posted additional warning notices, nominated staff to carry out safety checks, and instructed all staff to look out for and report any potential hazards.

FOOD HYGIENE

The ultimate objective of all food and drink hygiene regulations is to prevent people from becoming ill or being killed because of contaminated food and drink. Unfortunately, things do occasionally go wrong, and the attendant publicity can be disastrous! Rightly so, if the food poisoning was caused by poor hygiene standards in the workplace. However, bad publicity is only one factor. Managers must also be aware that, in such circumstances, they are likely to be prosecuted under both civil and criminal law.

The Food Safety Act 1990 and regulations made under the Act:

- forbids you to add to food or subtract from it anything which will make it harmful to health
- forbids you to supply any food which is inferior in nature or substance or quality to what the purchaser paid for
- forbids the offering for sale, or the sale, of food which is not fit for human consumption (it can be assumed that any food found in a catering unit is intended for sale, and therefore this provision could be used to prosecute you if any unfit food is found on your premises)
- introduce tough penalties for food hygiene offences, with fines of up to £20,000, plus a term of imprisonment on indictment of up to two years, or a summary conviction up to six months
- give tough new powers to enforcing officers – an Emergency Prohibition Notice immediately prohibits the use of any food treatment process or the use of any premises or equipment as specified in the notice, and such a notice can be used to close down premises without warning
- require owners of premises used for the purpose of a food business, to register with their local authority
- make training compulsory for all food handlers.

The Food Hygiene (General) Regulations 1970, as amended by the Food Hygiene (Amendment) Regulations 1990, protect food from possible sources of contamination. The provisions (see also *Health, Hygiene and Safety*, units 16 and 17) cover delivery, storage and handling practices:

- raw food must never be kept in contact with cooked food or any food unfit for humans, such as waste products
- open food must be stored at least half a meter (18 inches) above ground or floor level, and kept covered or effectively screened when exposed for sale, during sale or delivery to protect from contamination
- during delivery and storage, high risk foods such as alkaline soft cheeses and products that have been prepared for consumption without further cooking or reheating must be kept at or below 5 degrees Celsius. This includes smoked or otherwise cured fish or sliced meat which has not been preserved so it will keep at room temperature
- other foods such as yogurt, prepared vegetable salad, sandwiches, uncooked dough and products which will be reheated or cooked such as meat, meat substitute, fish, egg, dairy and vegetables must be kept at or below 8 degrees Celsius during delivery and storage (5 degrees from 1993)
- quick frozen foods must be stored at a temperature of -18 degrees Celsius, or lower; ice cream at -20 degrees.

Read units 34 to 44 of Health, Hygiene and Safety in the Hotel and Catering Industry. *Obtain a copy from HMSO of the food hygiene regulations, then consider the following case study.*

Jim the barman is a heavy smoker. Gordon the licensee likes Jim because he is an experienced barman who is good at his job. Jim wants to smoke during his work period, but Gordon has stopped him from smoking behind the bar. To keep the peace, Gordon tells Jim that he can smoke while he collects customers' empties.

Has a legal solution been found? Write your comments in the space below.

Anyone who handles food and drink is banned from smoking. Barstaff should not smoke when they are behind the bar or when they are in an area where drinks are served and consumed. This means that smoking is banned when staff collect empty glasses from the lounge, the public bar, and, in some cases, the garden.

THE HUMAN FACTOR IN HYGIENE

Human factors are as important in food hygiene as they are in accident prevention. Staff may not perceive that they are risking the customer's health if they leave food in a warm room, or delay cleaning a food slicer or fail to check that heated cabinets or refrigerators are at the correct temperature. Yet, given the presence of micro-organisms, any one of these factors could result in a serious food poisoning outbreak.

Hygiene dangers are all the more insidious because micro-organisms are invisible to the naked eye. Someone may be a Staphylococcus carrier. Careful scrubbing with appropriate cleaning agents may fail to kill off bacteria on a work surface. Food may be contaminated when it is delivered. Most employees will have no way of knowing. Taking a short-cut with food hygiene is like playing Russian roulette with people's lives — customers and staff.

Again, your task as a manager is to create a climate in which food hygiene is considered more important than even customer satisfaction. Customers would prefer to wait a few minutes for their meal, rather than be seriously ill with food poisoning because a short cut has been taken behind the scenes. And a customer who suffers from food poisoning after visiting an establishment is very unlikely to return. Even if he or she does not report the matter to a doctor (which could result in a visit from the environmental health officer), friends will be told and the reputation of the establishment will suffer.

Food hygiene is more than a list of *Do's* and *Don't's*. Staff will be better equipped for their work if they understand how contamination occurs. They should be encouraged to ask themselves at all times, 'Is this a situation where harmful bacteria could be transferred? Will harmful bacteria multiply in these conditions?'

Good training is extremely valuable, but every aspect of your day-to-day catering operations should be geared towards good hygiene. Work must be arranged so that food will not have to be prepared too far in advance or left standing in a warm condition. Staff must have enough time in their schedule so that they can 'clean as they go'. Food must be prepared in suitable quantities so that there is no temptation to serve the left-overs on a second or third day.

Make a spot check on your kitchens. Ask yourself the following question: 'Let's suppose that a particular item of food is contaminated when it arrives on the premises. Would any of our working practices lead to cross-contamination or to the rapid multiplication of harmful bacteria?' Write your findings in the space below.

Catering organisations should adopt the *hazard analysis critical control point* or HACCP approach to quality assurance. The first step is to identify the critical control points in the system, for example:

Delivery The quality, use-by date and, where appropriate, the temperature of all items.

Storage before preparation The temperature and humidity levels at which perishable materials are stored. Use-by dates. Storage conditions for all items, for example are cooked foods kept separate from raw foods? Rotation of stocks.

Preparation Temperature in preparation areas, use of different equipment for raw and cooked food, and for different categories of food. Storage conditions of any prepared food held prior to cooking, and how long before such food is cooked and served.

Cooking Temperatures reached at the centre of meat and poultry joints during cooking.

Portioning Temperatures during portioning, equipment used, length of time taken. Particular attention paid to large pieces of meat and poultry.

Storage before service Conditions, temperatures and length of time. Use-by dates for items which are delivered ready for service.

Next, establish appropriate monitoring procedures to check these points and give appropriate training to the staff concerned.

For catering systems which involve chilling, and/or freezing of foods, and distribution from a central production unit, additional control points need to be added to monitor the temperatures (at the centre of the food) and time taken:

- during initial chilling/freezing
- during distribution
- for reheating/regenerating.

There is further information in units 38, 39 and 40 of *Health and Safety in Hotels and Catering*, also in *Foodcraft 2: The Wet Processes* (which includes chapters on the cook-chill and cook-freeze processes. The detailed regulations are to be found in *Chilled and Frozen: Guidelines on Cook-Chill and Cook-Freeze Catering Systems*, Department of Health, 1989, available through HMSO, ISBN 0 11 321161 9.

FIRE

There are a number of acts and regulations regarding fire, which you must be aware of.

Read units 18 to 22 of Health, Hygiene and Safety in the Hotel and Catering Industry, *noting your own areas of responsibility in the space below.*

Then obtain a copy of the fire procedure used at your place of work. Walk around the building and inspect the fire alarms, fire exits, fire doors, smoke detectors, and different types of fire fighting equipment. Note below anything that is not in order.

It is all very well to know the legislation, but staff must also be trained to take fire seriously. Fire doors are no good if they are wedged open, and fire extinguishers are useless if no-one knows how to operate them.

The human factor may play an even bigger part in fire safety than it does in accident prevention. Most people will have had some sort of accident in their life, even if it is only a cut finger. But few people have any experience of fire. The possibility of a fire generally seems much more remote than that of an accident. The risk of fire is not widely perceived. An an added complication is that if a fire does break out, fear could prevent those involved from responding rationally.

Staff may take what they consider to be insignificant risks, in the belief that a fire could never break out in their establishment. But even tiny mistakes can have serious consequences.

In 1988 five people died of smoke inhalation in a particularly tragic hotel fire. The smoke reached them through a fire door which was propped open. Experts reckoned that if the door had been properly closed, the victims would have had enough time to escape.

PUTTING IT INTO PRACTICE

High standards do not come about simply because legislation exists. You need to encourage your staff by example and set up procedures to ensure that satisfactory standards are maintained:

- health and safety training (which is, in fact, a legal requirement)
- analysis of company/unit accident records
- safety audits and/or hazard spotting exercises
- consultation with safety committees, health and safety representatives and inspectors, environmental health officers, training consultants and so forth.

Take a long, hard look at your organisation's induction programme. List below the health and safety points it contains at present. Make another list of additional points you feel should be included.

Hopefully, the induction programme will cover most of the following:

- the organisation's health and safety policy statement
- safety rules
- safety precautions
- health precautions
- hygiene rules
- accident-reporting procedures
- first-aid facilities
- the responsibilities of individuals
- the work of the safety committee (if there is one).

More specifically, it should cover:

- dangerous areas
- protective clothing
- safety in connection with equipment/machinery
- warning systems at work
- fire exercises
- evacuation drills
- specific health and safety legislation
- workplace rules on health, safety and hygiene.

Remember that employers have a legal obligation to provide health and safety information to every employee, and to provide adequate training.

Most organisations have their own statement on health and safety policy. Scrutinise your policy statement, and make a list below of improvements you now would like to see in it. The box on page 11 of Health, Hygiene and Safety in the Hotel and Catering Industry *and the sample policy on pages 89 to 92 of this unit may give you some ideas.*

You may have noted:

- whether your company has such a statement (it must, by law, if it has five or more employees)
- whether the statement is practical (rather than theoretical)
- whether named individuals or job titles are still relevant
- whether the statement should be updated to include new equipment
- whether all staff, especially ones employed most recently, have had the document brought to their attention
- whether there is a better way of making all staff aware of the company's safety policy and arrangements.

Read chapter 18 of Employee Relations; *also unit 28 of* Health, Hygiene and Safety in the Hotel and Catering Industry, *paying particular attention to the accident prevention checklist. Then work out below a system of checks for your own unit. (Don't forget to allocate individual responsibilities and to establish a timescale for the checks.)*

You may decide to call in a local environmental health officer and/or a health and safety inspector to discuss the best ways to protect your staff, your customers and your workplace.

This concludes the self-study unit *Rights and Responsibilities*. You have laid the foundations for sound personnel practices which will enable your operation to keep its customers satisfied, to meet its financial and other targets, while bringing benefits to your staff, and fulfilling the demands of the law.